TEXAS REGISTER

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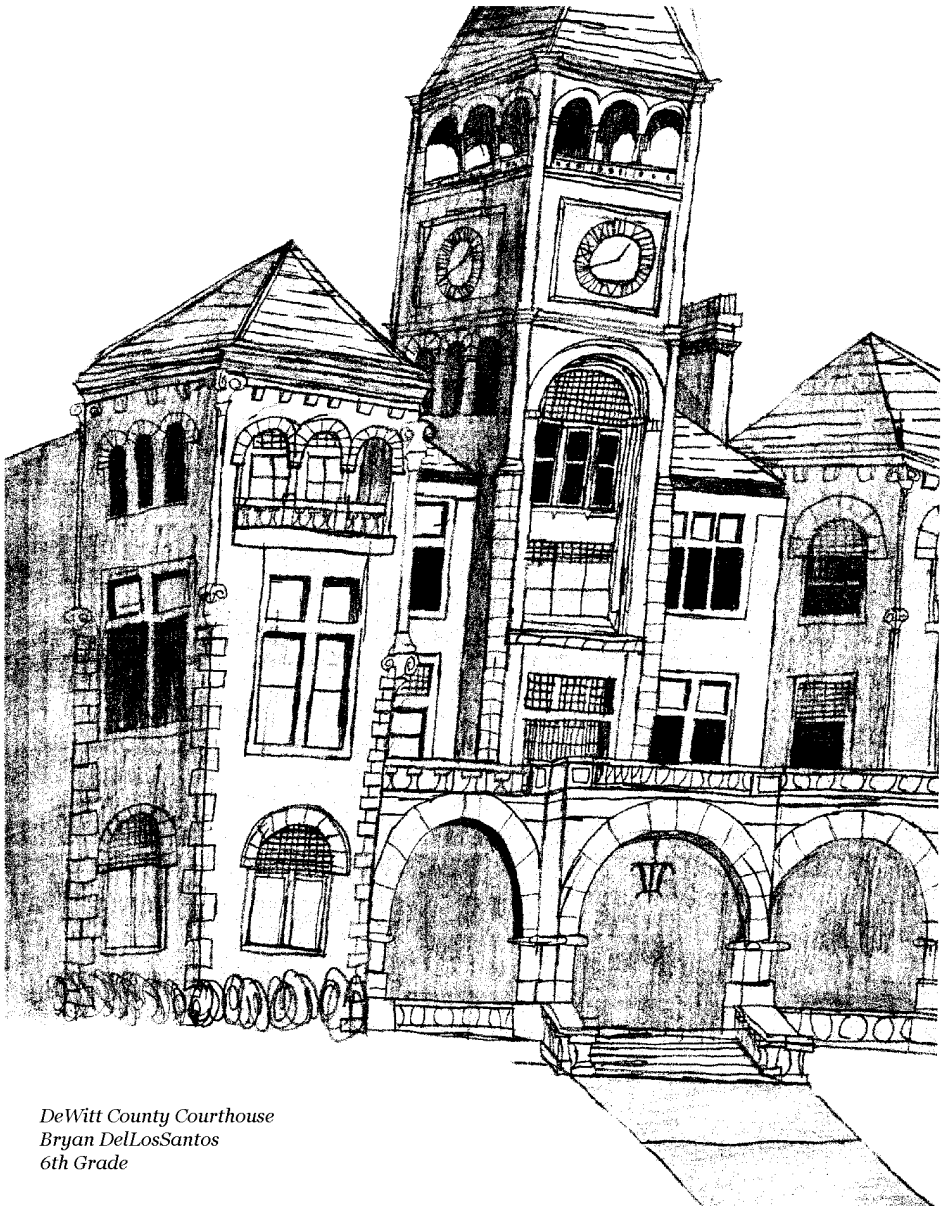

DeWitt County Courthouse
Bryan DelLosSantos
6th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0403-GA

Requestor:

The Honorable Jeff Wentworth

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether private schools must accept for enrollment children who have received an exemption from the immunizations required by the Health and Safety Code (RQ-0403-GA)

Briefs requested by November 28, 2005

RQ-0404-GA

Requestor:

The Honorable Luis U. Carrasco

Reeves County Attorney

Post Office Box 825

Pecos, Texas 79772

Re: Whether the nepotism statutes are applicable to the employment of a sheriff's relative by a private company that operates a county detention center (RQ-0404-GA)

Briefs requested by November 28, 2005

RQ-0405-GA

Requestor:

The Honorable D. Matt Bingham

Smith County Criminal District Attorney

Smith County Courthouse

100 North Broadway, 4th Floor

Tyler, Texas 75702

Re: Scope of the terms "rehabilitation service" and "sex offender treatment provider" in light of recent amendments to chapter 110, Occupations Code (RQ-0405-GA)

Briefs requested by December 2, 2005

RQ-0406-GA

Requestor:

The Honorable Eddie Arredondo

Burnet County Attorney

Burnet County Courthouse

220 South Pierce

Burnet, Texas 78611

Re: Sheriff's use of jail inmate trustees on projects for a nonprofit organization (RQ-0406-GA)

Briefs requested by December 3, 2005

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200505026
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: November 2, 2005

♦ ♦ ♦

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-528 Closed. Withdrawn by requestor.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P. O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200504877
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: October 27, 2005

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 102. HEALTH SPAS

SUBCHAPTER D. SECURITY

1 TAC §102.32

The Office of the Secretary of State proposes a new §102.32, concerning the amount of security that is required under §702.151 of the Occupations Code. The purpose of the rule is to implement amendments to the Texas Health Spa Act, Chapter 702 of the Occupations Code, enacted by the 79th Regular Legislative Session.

Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section has determined that for the first five year period that the proposed rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing the rule. The effect on health spa registrants who are required to comply with the rule will be the cost of providing a security deposit in an amount that is based on the amount members have paid for prepaid memberships at the registrant's facility. There is no anticipated impact on local employment.

Mr. Joyner also has determined that for each year of the first five years that the rule is in effect the public benefit anticipated as a result of enforcing the rule will be increased protection for the reimbursement of prepaid fees to members of registered health spas that close.

Comments on the proposed rule may be submitted to Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

The new rule is proposed under the Texas Occupations Code, §702.051(b)(1) which provides the Secretary of State with the authority to prescribe and adopt rules to administer Chapter 702 of the Occupations Code.

The new rule affects Texas Occupations Code, §702.151.

§102.32. Amount of Security Required under §702.151 of the Act.

(a) For purposes of this section, the term "total membership" in §702.151 and §702.158 of the Act means the health spa's total prepaid memberships.

(b) "Prepaid membership" means any membership that a member pays consideration for before the term of the membership is used by the member.

(c) A health spa registration application from a health spa operator, not exempt under §702.202 of the Act, shall include a written statement from the health spa operator that specifies:

(1) the total number of prepaid memberships at the health spa location; and

(2) the total amount paid for all such prepaid memberships.

(d) The health spa operator shall file a security for each of the operator's health spa locations in the following amounts:
Figure: 1 TAC §102.32(d)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504878
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 475-0775

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PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 122. FACILITIES PLANNING

The Texas Building and Procurement Commission (TBPC) proposes the repeal of 1 TAC Chapter 122, Subchapter A, containing §122.1 and §122.2, and Subchapter B, containing §122.3, all relating to Facilities Planning. These sections are being proposed for repeal because new §§122.1 - 122.3 are being proposed simultaneously and published elsewhere in this issue of the *Texas Register*.

Patrick J. Sullivan, Deputy Executive Director, has determined that for the first five year period the repeal is in effect there will not be any significant fiscal implication for state or other governmental entities as a result of the repeal of the rules.

Mr. Sullivan has further determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal of the existing rules will be neutral because there is no economic effect on large, small or micro-businesses that routinely participate in state business opportunities. These rules apply only to state agencies who utilize the TBPC's space planning services. There will be no anticipated economic costs to private persons who are not required to comply with the rules and there is no impact on local employment.

Comments on the proposal may be submitted to Ingrid K. Hansen, General Counsel, Texas Building and Pro-

curement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via e-mail to: *Ingrid.hansen@tbpc.state.tx.us*. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. APPLICATION FOR STATE-LEASED OR OWNED FACILITIES

1 TAC §122.1, §122.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Building and Procurement Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the authority of the Texas Government Code, §2165.104(c), which requires the TBPC to adopt rules consistent with private sector standards and industry best practices to govern the allocation of space.

Texas Government Code Annotated, §2165.104(c) is the sole statute affected by this repeal.

§122.1. Definitions.
§122.2. Requests for Allocation, Relinquishment, or Modification of State Owned Facilities Under the Commission's Control.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2005.

TRD-200504871
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 463-7829

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SUBCHAPTER B. SPACE ALLOCATION

1 TAC §122.3

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Building and Procurement Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the authority of the Texas Government Code, §2165.104(c), which requires the TBPC to adopt rules consistent with private sector standards and industry best practices to govern the allocation of space.

Texas Government Code Annotated, §2165.104(c) is the sole statute affected by this repeal.

§122.3. Space Allocation.
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2005.

TRD-200504872
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 463-7928

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CHAPTER 122. FACILITIES SPACE PLANNING

1 TAC §§122.1 - 122.3

The Texas Building and Procurement Commission (TBPC) proposes new 1 TAC Chapter 122, containing new §§122.1 - 122.3. The proposed new sections replace existing 1 TAC Chapter 122, Subchapter A, containing §122.1 and §122.2, and Subchapter B, containing §122.3, which are being proposed for repeal simultaneously and published elsewhere in this issue of the *Texas Register*. Current Chapter 122 contains Subchapter A and Subchapter B; proposed new Chapter 122 is not divided into subchapters.

Patrick J. Sullivan, Deputy Executive Director, has determined that for the first five-year period the new rules are in effect there will not be any significant fiscal implication for state or other governmental entities as a result of the new rules. The new rules provide for flexibility in the configuration of state-owned and leased space. The costs of leased space are dependent upon market factors and these rules will not impact the factors that affect real estate costs.

Mr. Sullivan has further determined that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of the new rules will be neutral because there is no economic effect on large, small or micro-businesses that routinely participate in state business opportunities. These rules apply only to state agencies who utilize the TBPC's space planning services. There will be no anticipated economic costs to private persons who are not required to comply with the rules and there is no impact on local employment.

Comments on the proposal may be submitted to Ingrid K. Hansen, General Counsel, Texas Building and Procurement Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via e-mail to: *Ingrid.hansen@tbpc.state.tx.us*. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new rules are proposed under the authority of the Texas Government Code, §2165.104(c), which requires the TBPC to adopt rules consistent with private sector standards and industry best practices to govern the allocation of space.

The following code is affected by the proposed rules: Texas Government Code, §2165.104(c).

§122.1. Definitions.

The following words and terms, when used in this chapter and in studies, reports and guidelines pursuant to Government Code, Chapter 2165, Subchapter C, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency Employee. The full-time equivalent (FTE) of a person performing services on site under the direction of a state agency, including hours worked by full-time employees, part-time employees,

and consultant and contract individuals as defined by the state auditor; including employees paid from funds maintained outside the treasury and hours worked by volunteers performing necessary services. Requests must include all contract and volunteer employees' work-hours and functions.

(2) Agency Director. The highest-ranking executive officer with full-time responsibility for the operations of the agency.

(3) Division Director. The secondary managerial level, deputy directors, department directors who generally report to the agency director.

(4) Professional/Manager. Attorneys, architects, engineers, doctors, or third level managerial positions with supervisory responsibilities who generally report to the secondary managerial level.

(5) Technician/Program Administrator. Staff positions with technical, analytical or program administrative duties which may include fourth level managerial duties.

(6) Administrative Support. Administrative support technicians, aides, receptionists.

(7) File Areas. Open or built-out spaces containing active vertical or lateral file cabinets required to be readily accessible for daily agency operations. Closed files should be located in appropriate archival, non-office, facilities.

(8) Office Machine Areas. Centrally located open or built-out spaces for copiers, network printers, faxes, and/or scanners.

(9) Special Areas. Spaces required for agency mission-specific operations, such as clinical showers, evidence rooms, mechanized file systems, public record review areas, video observation rooms, hearing rooms, centralized computer network operation rooms, print shops, centralized supply cabinets, and/or warehouse spaces exceeding 1,000 square feet of non-office space.

(10) Circulation Space. Percentage added to open or built-out spaces to provide adequate egress within allocation.

(11) Facilities Request Portal. Central internet site where application for all facilities-related work shall be requested. Services available through the Facilities Portal include: leased or state owned space assignments; space planning and feasibility studies; real estate market studies; new construction; modifications and alterations of state owned and leased facilities; exclusion requests for modifications to state owned or leased facilities; inspections and surveys; and architectural/engineering services or consultations. The internet address for the Facilities Request Portal is: http://portal.tbpc.state.tx.us/fcsm/facilityfrontpage.asp.

(12) Agency Site. A building or building complex on a single site or under a single lease contract, where agency business is transacted or services are provided.

(13) Commission. The Texas Building and Procurement Commission.

(14) Agency Space Allocation. The area assigned to an agency calculated on the basis of Gross Area less the following areas:

(A) Space designated and regularly used for public activities, including ancillary space such as lobbies, corridors, toilet rooms and refreshment areas associated with the public space. This does not include lobbies and other space ancillary to space primarily intended for internal use by FTE's in the course of interfacing with clients, or to accommodate occasional visits by members of the public;

(B) Vertical shafts or chases used for circulation (elevators or stairs) or mechanical, electrical, telecommunication, or data cabling distributions;

(C) Mechanical, electrical, telecommunication, and data cabling rooms which house equipment serving more than a single tenant; and

(D) Other areas which are not relevant to tenant agency functions.

(15) Gross Area. Gross Floor Areas shall be the area within the inside perimeter of the outside walls of the building with no deduction for hallways, stairs, closets, interior wall thickness, columns, or other features. When floors open to an atrium, the inside finished surface of the walls enclosing the atrium shall be used in lieu of an outer building wall.

(16) Space Allocation Ratio. The mathematical result of dividing the occupying agency's Space Allocation by the total number of agency employees per site.

(17) Space Use Study. A study conducted by the commission to determine space requirements for state agencies.

(18) State Agency. A department, commission, board, office of other agency in the executive branch of state government created by the state constitution or a state statute; the supreme court, the court of criminal appeals, a court of appeals, the Texas Judicial Council; and a university system or an institution of higher education as defined by §61.003, Education Code, except a public junior college.

(19) Usable Office Space. That area of space as defined in paragraph (14) of this section, computed by measuring from the finished surface of the office side of a corridor and/or permanent wall, to the center of partitions that separate interior spaces from adjoining Usable Areas, and the inside finished surface of the dominant portion of the permanent outer building walls.

(20) Waiver. TBPC's decision to allow more square feet for an Agency Space Allocation than the General Space Allocation Guidelines provide.

§122.2. Requests for Allocation, Relinquishment, or Modification of Space in Facilities under the Commission's Control.

(a) Requests for allocation, relinquishment, or modification of space in facilities under the Commission's control shall be submitted via the TBPC Facilities Request Portal by an authorized agency representative. The internet address for the Facilities Request Portal is: http://portal.tbpc.state.tx.us/fcsm/facilityfrontpage.asp. Facilities Portal Requests shall include the following information:

(1) Statement of justification including increased number of FTEs and the name of he agency unit; inadequacy of current facilities; lease expiration; and other reasons relevant to the request for facility space changes

(2) Certification that funds are authorized and available to accomplish the requested action;

(3) Identification of action requested including whether the request adds, relinquishes, or modified state-owned space; and other reasons relevant to the request;

(4) Desired location including: location of current facility; location of requested facility; or special needs relevant to the request;

(5) Term of need to include: short-term (48 months or less) or long-term (specify duration); date occupancy or action is needed; and other critical schedule factors;

(6) Present occupancy status of subject agency program describing whether the unit is now housed in state-owned (name and address of facility), state-leased, or not housed; present lease number; number of current FTEs and agency's current square footage;

(7) Special conditions related to critical agency functions that require facility services beyond regular business hours, or other relevant factors; and

(8) Requesting agency contact and telephone and fax numbers for agency program requiring space or modification.

(b) As applicable, the requesting agency shall work with the Space Management Program to complete a task and space requirements questionnaire, which will form the basis for application of space allocation standards as maintained by TBPC.

(c) The TBPC will grant or deny a request in writing. TBPC's decision on the request is within its sole discretion and is final.

§122.3. Space Allocation.

(a) General. The TBPC is required to allocate space to state agencies based on best space planning practices for specific functional needs in the most efficient manner possible.

(b) Applicability. Sections 122.1 - 122.3 of this title apply to TBPC's actions under Government Code, Chapter 2165, Subchapter C and to office space, warehouse space, laboratory space, storage space exceeding 1,000 gross square feet, boat storage space, certain aircraft hangar space, vehicle parking space; and a combination of those types of space. These rules apply whether the facility is state-owned or leased.

(c) Exemptions. This section does not apply to:

(1) residential space for Texas Health and Human Services Commission or the Texas Youth Commission;

(2) space utilized for less than one month for meetings, conferences, seminars, conventions, displays, examinations, auctions, or similar purposes;

(3) a site where it is not practical to apply this section because there are too few employees or because of the need for a particular type or use of the space ;

(4) radio antenna space;

(5) district office space for members of the legislature;

(6) residential property acquired by the Texas Department of Housing and Community Affairs or the Texas State Affordable Housing Corporation; or

(7) classroom and instructional space except as provided by Government Code §2167.007.

(d) Waivers of General Space Allocation Guidelines: Waivers may be granted where the agency is willing to accept different quality space at less cost in exchange for a greater amount of space; or the agency will accept space in a different location at a lower cost in exchange for a greater amount of space; or there is less market flexibility in the market, as in rural areas. Waivers may also be granted because of the particular needs of the agency programs.

(e) Request for Waiver. An agency request for a waiver from General Space Allocation Guidelines must be submitted, in writing, and must:

(1) describe the reason that the Guidelines are not practical for the particular needs of the agency at the particular location; and

(2) discuss the financial impact of the requested waiver.

(f) General Space Allocation Guidelines: Each request for allocation, relinquishment or modification of agency space will be evaluated in Space Use Study to determine functionally specific requirements. The Space Use Study will be based on space allocation determined by space planning criteria and design standards. Such criteria and standards shall relate directly to tasks for which space is being allocated and shall be updated regularly to reflect changes in best management practices, office equipment, personnel policies and for consistency with best practices used in the private sector.

(g) The TBPC may allocate usable office space in amounts greater than that provided by the Guidelines when:

(1) particular agency tasks require a specific design response not otherwise categorized;

(2) strict application of the general guidelines to a given site is not practical; or

(3) the best financial interest of the state allows for greater space.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2005.

TRD-200504873
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 463-7829

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 211. INFORMATION RESOURCES MANAGERS

The Department of Information Resources (department) proposes amendments to 1 TAC §§211.1, 211.10, 211.11, 211.20, and 211.21 to address the use of joint information resources managers by state agencies and institutions of higher education. House Bill 1516, enacted by the 79th Legislature, Regular Session, amended the Information Resources Management Act to allow an individual to serve as the information resources manager for more than one state agency.

The amended rules proposed for publication underwent the analysis required by §2054.121, Texas Government Code, and were found to have no impact on the mission of higher education, student populations, and federal grant requirements.

Dustin Lanier, Strategic Initiatives Division Director for the department, has determined that there will be no fiscal implications for state or local government if the changes to §§211.1, 211.10, 211.11, 211.20 and 211.21 are adopted. Local government is not subject to the rules. The public will benefit by the adoption.

Mr. Lanier believes there will be no different effect on small businesses than there is on large businesses since the rules are inapplicable to businesses, and that there is no additional anticipated economic cost to persons if the amendments are adopted.

Comments on the proposed changes to 1 TAC §§211.1, 211.10, 211.11, 211.20 and 211.21 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days after publication.

SUBCHAPTER A. DEFINITIONS

1 TAC §211.1

The amendments are proposed under §§2054.071, 2054.074, and 2054.052(a), Texas Government Code.

The amendments are promulgated to implement §2054.071 and §2054.074, Texas Government Code, and are authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

§211.1. Applicable Terms and Technologies for Information Resources Managers.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) Joint information resources manager--A person that is designated by more than one state agency or institution of higher education and approved by the department to simultaneously serve as the information resources manager for each of the designating agencies or institutions of higher education.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504917
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 936-6448

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SUBCHAPTER B. STATE AGENCY INFORMATION RESOURCES MANAGERS

1 TAC §211.10, §211.11

The amendments are proposed under §§2054.071, 2054.074, and 2054.052(a), Texas Government Code.

The amendments are promulgated to implement §2054.071 and §2054.074, Texas Government Code, and are authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

§211.10. Selection of Information Resources Managers.

(a) (No change.)

(b) The head of a state agency may serve as the state agency's information resources manager or may designate another senior official or, in the case of a "joint" information resources manager, an official from another state agency or institution of higher education to serve as the information resources manager on the agency's behalf. The designation of a state agency information resources manager is intended to establish clear accountability for setting policy for information resources management activities, provide for greater coordination of the state agency's information activities, and ensure greater visibility of such activities within and between state agencies. [~~The head of a state agency may serve as the state agency's information resources manager or may designate another senior official to serve as the information resources manager on their behalf. The designation of a state agency information resources manager is intended to establish clear accountability for setting policy for information resources management activities, provide for greater coordination of the state agency's information activities, and ensure greater visibility of such activities within and between state agencies.~~]

(c) The head of each state agency shall designate an information resources manager. The state agency's designation must contain the name, title, authority, responsibilities, organizational resources, education and experience of the proposed information resources manager in the format prescribed by the department. In the case of a person designated as a joint information resources manager, the state agency's designation must include the name of the state agency or institution of higher education that employs the designated information resources manager. Designation of a joint information resources manager requires prior approval by the department. The department must acknowledge the receipt of the designation of the information resources manager within 30 days after receipt of the designation. [~~The head of each state agency shall designate an information resources manager. The state agency's designation must contain the name, title, authority, responsibilities, organizational resources, education and experience of the proposed information resources manager in the format prescribed by the department. The department must acknowledge the receipt of the designation of the information resources manager within 30 days after receipt of the designation.~~]

§211.11. Initial Qualifications and Continuing Education.

With the exception of a joint information resources manager, any person who is designated by the head of a state agency as the information resources manager of that state agency must be a senior official of the state agency. Joint information resources managers must meet this requirement for one of the state agencies or institutions of higher education that they represent. State agency heads are encouraged, but not required, to make designations on the basis of qualification guidelines provided by the department. Information resources managers for agencies should, as a minimum, possess a four-year college or university degree from a fully accredited institution. [~~Any person who is designated by the head of a state agency as the information resources manager of that state agency must be a senior official of the state agency. State agency heads are encouraged, but not required, to make designations on the basis of qualification guidelines provided by the department. Information resources managers for agencies should, as a minimum, possess a four-year college or university degree from a fully accredited institution.~~]

(1) - (2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504918

Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 936-6448

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SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION INFORMATION RESOURCES MANAGERS

1 TAC §211.20, §211.21

The amendments are proposed under §§2054.071, 2054.074 and 2054.052(a), Texas Government Code.

The amendments are promulgated to implement §2054.071 and §2054.074, Texas Government Code, and are authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

§211.20. Selection of Information Resources Managers.

(a) (No change.)

(b) The head of an institution of higher education may serve as the institution's information resources manager or may designate another senior official or, in the case of a "joint" information resources manager, an official from another state agency or institution of higher education to serve as the information resources manager on their behalf. If an institution of higher education has separate computing facilities for academic and administrative computing services, the institution may designate separate information resources managers for academic and administrative information resources. The designation of an institution of higher education information resources manager is intended to establish clear accountability for setting policy for information resources management activities, provide for greater coordination of the institution's information activities, and ensure greater visibility of such activities within and between institutions of higher education. [~~The head of an institution of higher education may serve as the institution's information resources manager or may designate another senior official to serve as the information resources manager on their behalf. If an institution of higher education has separate computing facilities for academic and administrative computing services, the institution may designate separate information resources managers for academic and administrative information resources. The designation of an institution of higher education information resources manager is intended to establish clear accountability for setting policy for information resources management activities, provide for greater coordination of the institution's information activities, and ensure greater visibility of such activities within and between institutions of higher education.~~]

(c) (No change.)

(d) The head of each institution of higher education shall designate an information resources manager. The institution of higher education's designation must contain the name, title, authority, responsibilities, organizational resources, education and experience of the proposed information resources manager in the format prescribed by the department. In the case of a person designated as a joint information resources manager, the institution of higher education's designation must include the name of the state agency or institution of higher education that employs the designated information resources manager. Designation of a joint information resources manager requires prior approval by the department. The department must acknowledge receipt of the designation of the institution of higher education's information resources manager within 30 days after receipt of the designation. [~~The head of each institution of higher education shall designate an information resources manager. The institution of higher education's designation must contain the name, title, authority, responsibilities, organizational resources, education and experience of the proposed information resources manager in the format prescribed by the department. The department must acknowledge receipt of the designation of the institution of higher education's information resources manager within 30 days after receipt of the designation.~~]

§211.21. Initial Qualifications and Continuing Education.

Any person who is designated by the head of an institution of higher education as the information resources manager must be a senior official of that institution. Joint information resources managers must meet this requirement for one of the state agencies or institutions of higher education that they represent. Institutions of higher education are encouraged, but not required, to make designations on the basis of qualification guidelines provided by the department. [~~Any person who is designated by the head of an institution of higher education as the information resources manager must be a senior official of that institution. Institutions are encouraged, but not required, to make designations on the basis of qualification guidelines provided by the department.~~]

(1) - (2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504919
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 936-6448

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CHAPTER 215. STATEWIDE TECHNOLOGY CENTERS FOR DATA AND DISASTER RECOVERY SERVICES

The Department of Information Resources (department) proposes new 1 TAC Chapter 215, §§215.1 - 215.3 and §215.10 in its entirety to define statewide technology centers for data and disaster recovery services. The rules are promulgated to implement §2054.382, Texas Government Code, which requires the department to describe, by rule, the data services provided by statewide technology centers. The rule is further authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

The sections are not being proposed to apply to institutions of higher education at this time, therefore, no Subchapter C is being proposed currently. If the department later determines that the State would benefit from the applicability of the proposed rules to institutions of higher education, the department will work with the Information Technology Council for Higher Education to conduct the analyses required by §2054.121 and §2054.377, Texas Government Code.

Section 215.1 of Subchapter A sets forth applicable terms and technologies for statewide technology centers for data and disaster recovery services. Section 215.2 of Subchapter A defines institutions of higher education. Section 215.3 of Subchapter A defines state agencies that are not institutions of higher education. Section 215.10 of Subchapter B requires state agencies that are not institutions of higher education to complete inter-agency contracts with the department for data and disaster recovery services no later than March 31, 2006.

Kim Weatherford, Statewide Technology Operations Division Director for the department, has determined that there will be no fiscal implications for state or local government if the provisions in §§215.1 - 215.3 and §215.10 are adopted. The rules are not applicable to local government. The public will benefit by the adoption.

Mr. Weatherford believes there will be no different effect on small businesses than there is on large businesses since the rules are inapplicable to businesses, and that there is no additional anticipated economic cost to persons if the rules are adopted.

Comments on the proposed new 1 TAC §§215.1 - 215.3 and §215.10 may be submitted to Renée Mauzy, General Counsel, Department of Information Resources, via mail to P.O. Box 13564, Austin, Texas 78711, or electronically to renee.mauzy@dir.state.tx.us no later than 5:00 p.m. CT, within 30 days after publication.

SUBCHAPTER A. DEFINITIONS

1 TAC §§215.1 - 215.3

The rules are proposed under §2054.382 and §2054.052(a), Texas Government Code.

The new rules implement §2054.382, Texas Government Code, which requires the department to describe, by rule, the data services provided by statewide technology centers.

§215.1. Applicable Terms and Technologies for Statewide Technology Centers for Data and Disaster Recovery Services.

The following words and terms, when used with this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Statewide Technology Centers for Data and Disaster Recovery Services--Will provide implementation and life cycle maintenance, support and technology services (performance tuning, capacity planning and technology roadmap) for:

(A) All server-based computing systems up to and including mainframes for all purposes (production, development, test, training, etc.).

(B) All non-application server-based software including, but not limited to, operating systems, storage management, online transaction management, database management, utilities, communications management, security management, systems management, and other related software.

(C) Disaster recovery capabilities.

(D) Production control and scheduling capabilities.

(E) Data center physical requirements, environmental equipment and management tools, including, but not limited to, raised floor, equipment cabling, electrical power, HVAC, physical security, UPS, generators, interfaces to state-provided data network and other related environmental equipment.

(F) Printers supporting data center requirements.

(G) Media and storage management systems.

(H) All additional equipment required to operate the data center.

(2) Expenditures Outside of Data Center Operations--Information technology (IT) expenditures not included in the implementation and life cycle maintenance, support and technology services covered under the Statewide Technology Centers for Data and Disaster Recovery Services. A list of the specific expenditure types is available in the Statewide Technology Centers for Data and Disaster Recovery Services guide available from http://www.dir.state.tx.us.

§215.2. Institution of Higher Education.

A university system or institution of higher education as defined by §61.003, Education Code.

§215.3. State Agency.

A department, commission, board, office, council, authority, or other agency, other than an institution of higher education, in the executive or judicial branch of state government, that is created by the constitution or a statute of this state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504880
Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 475-4759

SUBCHAPTER B. STATEWIDE TECHNOLOGY CENTERS FOR STATE AGENCIES

1 TAC §215.10

The rule is proposed under §2054.382 and §2054.052(a), Texas Government Code.

The new rule implements §2054.382, Texas Government Code, which requires the department to describe, by rule, the data services provided by statewide technology centers.

§215.10. Statewide Technology Centers for State Agencies.

Not later than March 31, 2006 all state agencies shall complete inter-agency contracts with the department for data and disaster recovery services.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504881

Renée Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 936-6448

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §351.9

The Health and Human Services Commission (HHSC or Commission) proposes to amend Chapter 351, Coordinated Planning and Delivery of Health and Human Services, §351.9, Public Complaints.

Background and Justification

Section 351.9 outlines the process by which members of the public, consumers, and recipients of health and human services may submit complaints to the Commission. The proposed amendment updates the current complaint process and corrects the contact information for filing complaints with the Commission. The amendment also updates references to Government Code §531.011(d), previously Texas Civil Statutes, Article 4413(502), §12(c).

Under section 351.9, members of the public may submit complaints to HHSC concerning the functions, services, programs or staff of HHSC and the health and human services (HHS) departments subject to HHSC's oversight: the Department of Aging and Disability Services (DADS), the Department of Assistive and Rehabilitative Services (DARS), the Department of Family and Protective Services (DFPS), and the Department of State Health Services (DSHS). Under the amended complaint process, the Office of the Ombudsman will coordinate with the appropriate HHSC program or HHS department. The Office of the Ombudsman will acknowledge receipt of complaints within 5 business days, and resolve complaints within 30 days of receipt of the complaint. Resolution may include referring the complainant to the appropriate program or department complaint resolution procedures.

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that for the first five-year period the section is in effect there should be no fiscal implications for state or local governments as a result of enforcing the section.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there should be no effect on small businesses or micro-businesses to comply with the amendments as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses should not be required to alter their business practices in order to comply with the amendments. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no anticipated negative impact on local employment.

Public Benefit

Susan Johnson, Associate Commissioner for the Office of the Ombudsman, has determined that the public will benefit from adoption of the amendments. The anticipated public benefit, as a result of enforcing the amendment, will be to ensure that members of the public understand that they have a right to file a complaint with HHSC and have the correct information by which to do so.

Regulatory Analysis

HHSC has determined that the proposed amendment is not a "major environmental rule," as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. The proposed amendment is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Public Comment

Written comments on the proposal may be submitted to Susan Johnson, Associate Commissioner, Office of the Ombudsman, Mail Code H-700, Texas Health and Human Services Commission, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for November 14, 2005 at 9:30 AM. The hearing will be held at Health and Human Services Commission, Permian Basin Conference Room, Braker Center, Building H, 11209 Metric Blvd, Austin, Texas 78758.

Statutory Authority

The amendment is proposed under authority granted to HHSC by §531.033 of the Government Code, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties; and §531.011 and §531.409 of the Government Code, which authorize the Executive Commissioner to adopt a rule informing the public about how to submit complaints to HHSC.

The proposed amendment affects Texas Government Code, §§531.033, 531.011, and 531.409. No other statutes, articles, or codes are affected by the proposed amendment.

§351.9. Public Complaints.

(a) Introduction. The Health and Human Services Commission (HHSC) adopts this rule in compliance with Texas Government Code §531.011(d), [~~Civil Statutes, Article 4413(502), §12(c),~~] which states: The Commissioner by rule shall establish methods by which the public, consumers, and service recipients can be notified of the mailing addresses and telephone numbers of appropriate agency personnel for the purpose of directing complaints to the Commission.

(b) How and where to make complaints. Complaints may be sent by mail [~~or delivered~~] to HHSC at P.O. Box 85200, Mail Code H-700, Austin, Texas 78708-5200, [~~4807 Spicewood Springs Road, Building 4, Austin, Texas 78759 or~~] by telephone to 1-877-787-8999, by email to contact@hhsc.state.tx.us, or by fax to 512/491-1967. [~~telephoned to HHSC at (512) 502-3200.~~] Complaints should be addressed to the attention of the HHSC Office of the Ombudsman [~~External Affairs Division~~].

(c) Types of complaints. HHSC accepts complaints about functions, services, programs or staff of the Health and Human Services Commission and the health and human services departments [~~its own functions, and about the 11 health and human services agencies~~] subject to its oversight: the Department of Assistive and Rehabilitative Services (DARS), Department of Aged and Disabled Services (DADS), Department of State Health Services (DSHS), and Department of Family Protective Services (DFPS). [~~Interagency Council on Early Childhood Intervention, Texas Department on Aging, Texas Commission on Alcohol and Drug Abuse, Texas Commission for the Blind, Texas Commission for the Deaf and Hearing Impaired, Texas Department of Health, Texas Department of Human Services, Texas Juvenile Probation Commission, Texas Department of Mental Health and Mental Retardation, Texas Rehabilitation Commission, and Texas Department of Protective and Regulatory Services. HHSC does not accept complaints related to the personnel or accounting functions of the 11 health and human services agencies.~~]

(d) Procedure for resolving complaints. The HHSC Office of the Ombudsman coordinates with the appropriate HHSC program or health and human services (HHS) department to assist in resolving complaints. [~~HHSC forwards each complaint to the agency about which the complaint is made.~~] The Office of the Ombudsman or the appropriate HHSC program or HHS department [~~The agency about which the complaint is made~~] responds directly to the complainant [~~and copies HHSC~~]. The Office of the Ombudsman [~~HHSC~~] may follow-up if it believes the HHSC program's or HHS department's [~~agency's~~] response to the complainant is inadequate. [~~If the complaint is about HHSC, the External Affairs Division works with the appropriate deputy commissioner to respond to the complaint.~~] Complaints are acknowledged within 5 business days and resolved within 30 calendar days of receipt. A copy of this complaint process is available in writing upon request to the HHSC Office of the Ombudsman and is also available on the HHSC Office of the Ombudsman website at http://www.hhs.state.tx.us/OMB.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 26, 2005.

TRD-200504850
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER D. CERTIFICATION OF FARMERS MARKETS

4 TAC §17.72

The Texas Department of Agriculture (the department) proposes amendments to §17.72 concerning renewal dates for the registration and certification of farmers markets by the department. The amendments to §17.72 are proposed to change the annual renewal period from April 1 through April 30 to February 1 through February 28 with an expiration date of March 31 of the following year. In addition, the amendments provide that application forms will be available only from the state headquarters in Austin.

Delane Caesar, senior policy advisor for marketing and promotion, has determined that for the first five-year period the proposed amendments are in effect there is no anticipated fiscal impact for state and local governments as a result of administering or enforcing the amendments as proposed.

Ms. Caesar also has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of administering and enforcing the section, as amended, will be that the amendments will allow the department to gather and print current market information for consumers by the beginning of the farmers market season. There is no cost anticipated to micro-businesses, small businesses or individuals required to comply with the proposed amendments.

Comments on the proposal may be submitted to Delane Caesar, senior policy advisor for marketing and promotion, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments to §17.72 are proposed under Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; and the Code, §12.0175, which provides that the department, by rule, may establish programs to promote and market agricultural products and other products grown, processed, or produced in the state, and adopt rules necessary to administer a program established under this section.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§17.72. Application Process.

(a) An applicant seeking certification must submit a completed application on a form approved by the Texas Department of Agriculture to the state headquarters in Austin. Application forms may be obtained from [~~any regional office and/or~~] the state headquarters of the Texas Department of Agriculture.

(b) Within 45 days of receipt of a completed application for certification, the commissioner or an authorized agent shall notify the applicant in writing of the approval or denial of his application. If approved, the department shall mail to the recipient the farmers market certificate, which shall expire on the following March 31 [~~May 31~~].

(c) Certifications must be renewed annually. Between February 1 and February 28 [~~April 1 and April 30~~] annually, the department shall mail to each certified farmers market a renewal form setting forth the requirements for renewal. Within 30 days of receipt of the renewal

form, the farmers market shall complete and return the form to the department, together with all the items required by §17.73(2) of this title (relating to Eligibility Requirements) to be filed with the department on an annual basis.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 31, 2005.

TRD-200504955
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER D. POWERS OF CREDIT UNIONS

7 TAC §91.402

The Credit Union Commission proposes amendments to §91.402, concerning insurance for members. The amendments specify how charges for insurance on a loan must bear a reasonable relationship to the collateral, risk and amount of the loan and that a person selling any insurance product on behalf of a credit union must be qualified and licensed under applicable State insurance licensing standards.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Galvin has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be less confusion by the general public regarding the amount and type of insurance which can be required in connection with a loan. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 20, 2006, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §123,107, which authorizes the Commission to adopt rules regarding insurance for members.

The specific section affected by the proposed amendment is Texas Finance Code, §123.107.

§91.402. Insurance for Members.

A credit union may make insurance programs available to its members, including insurance programs at the individual member's own expense, if the following conditions are complied with:

(1) The purchase of any type of insurance coverage by a member is voluntary, except as provided in paragraphs [~~paragraph~~] (2) and (3) of this section, and a copy of the written election to purchase the insurance is on file at the credit union.

(2) Insurance may be required on a loan if the coverage and the charges for the insurance bear a reasonable relationship to:

(A) the value of the collateral;

(B) the existing hazards or risk of loss, damage, or destruction; and

(C) the amount, term, and conditions of the loan.

(3) [~~(2)~~] [~~Subject to reasonable requirements, if~~] If the insurance is a condition of a loan;[~~:~~]

(A) the credit union shall give the member written notice that clearly and conspicuously states that insurance is required in connection with the loan; and

(B) the member who is borrowing may purchase or provide the insurance from a carrier of the member's choice, or the member who is borrowing may assign any existing insurance coverage.

(4) [~~(3)~~] An officer, director, employee, or committee member of a credit union may not accept anything of value from an insurance agent, insurance company, or other insurance provider offered to corruptly induce the credit union to sell or offer to sell insurance or other related products or services to the members of the credit union.

(5) [~~(4)~~] If a credit union replaces an existing loan or renews a loan and sells the member new credit life or disability insurance, the credit union shall cancel the prior insurance and provide the member with a refund or credit of the unearned premium or identifiable charge before selling the new insurance to the member.

(6) The person selling or offering for sale any insurance product in any part of a credit union's office or on its behalf is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2005.

TRD-200504870

Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 837-9236

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7 TAC §91.405

The Credit Union Commission proposes amendments to §91.405, concerning records retention. The amendments revises the title of the section to more accurately reflect what the rule pertains to and corrects a typographical error.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Galvin has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be ease of use of the rule. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 20, 2006, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §123,110, which authorizes the Commission to adopt rules regarding credit union records.

The specific section affected by the proposed amendment is Texas Finance Code, §123.110.

§91.405. Records Retention <u>and Preservation</u>.

(a) (No change.)

(b) Manner of maintenance. Except for those records described in subsection (c) of this section, records may be maintained in whatever manner, form or format a credit union deems appropriate; provided, however, the records required by this section must clearly and accurately reflect the information required, provide an adequate basis for the examination and audit of the information, and can be retrieved in a readable and useable format. Records may be maintained in hard copy, automated or electronic form provided the records are easily retrievable, <u>readily</u> [~~ready~~] available for inspection, and capable of being reproduced in a hard copy. A credit union may contract with third party service providers to maintain records required under this part.

(c) - (l) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2005.

TRD-200504869
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 837-9236

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7 TAC §91.409

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Credit Union Department or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Credit Union Commission proposes to repeal §91.409, concerning permanent closing of an office or operation. This rule is being replaced by §91.5005 which updates the rule and places all rules related to closures in the same chapter.

The repeal of the rule is proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the rule is repealed there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Galvin has also determined that for each year of the first five years the rule is repealed, the public benefits anticipated as a result of repealing the rule will be ease of use by credit unions and the public with the new rule replacing the repealed rule. There is no anticipated effect on small businesses as a result of repealing the rule. There is no economic cost anticipated to credit unions or individuals for repealing the rule.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 20, 2006, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The repeal is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the proposed repeal is Texas Finance Code, §122.012.

§91.409. Permanent Closing of an Office or Operation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2005.

TRD-200504868

Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 837-9236

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SUBCHAPTER M. ELECTRONIC OPERATIONS

7 TAC §91.4001

The Credit Union Commission proposes amendments to §91.4001, concerning authority to conduct electronic operations. The amendments require credit unions to establish internal controls and an annual review of electronic system backup procedures. A section is also rewritten for clarity.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Galvin has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the rule will be greater protection of and access to the credit union's records in the event of a computer or other electronic failure. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 20, 2006, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the proposed amendment is Texas Finance Code, §123.002.

§91.4001. Authority to Conduct Electronic Operations.

(a) A credit union may use, or participate with others to use, electronic means or facilities to perform any function or provide any product or service as part of an authorized activity. Electronic means or facilities include, but are not limited to, automated teller machines, automated loan machines, personal computers, the Internet, the World Wide Web, telephones, and other similar electronic devices.

(b) To optimize the use of its resources, a credit union may market and sell, or participate with others to market and sell, electronic capacities and by-products to others, provided the credit union acquired or developed these capacities and by-products in good faith as part of providing financial services to its members.

(c) If a credit union uses electronic means and facilities authorized by this rule, the credit union's board of directors must require staff to:

(1) Identify, assess, and mitigate potential risks and establish prudent internal controls, and system backup procedures; and

(2) Implement security measures designed to ensure secure operations. Such measures should take into consideration:

(A) the prevention of unauthorized access to credit union records and credit union members' records;

(B) the prevention of financial fraud through the use of electronic means or facilities; and

(C) compliance with applicable security device requirements for teller machines contained elsewhere in Chapter 91.

(d) All credit unions engaging in such electronic activities must comply with all applicable state and federal laws and regulations as well as [~~requirements, including~~] addressing all safety and soundness concerns [~~and ensuring compliance with applicable state and federal laws and regulations~~].

(e) A credit union shall review, on at least an annual basis, its system backup procedures for all electronic activities.

(f) [~~(e)~~] A credit union shall not be considered doing business in this State solely because it physically maintains technology, such as a server, in this State, or because the credit union's product or services are accessed through electronic means by members located in this State.

(g) [~~(f)~~] A credit union that shares electronic space, including a co-branded web site, with a credit union affiliate, or another third-party must take reasonable steps to clearly and conspicuously distinguish between products and services offered by the credit union and those offered by the credit union's affiliate, or the third-party.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2005.

TRD-200504867
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 837-9236

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7 TAC §91.4002

The Credit Union Commission proposes amendments to §91.4002, concerning notice requirement; security review. The amendments revise the title of the section to more accurately reflect what the rule pertains to and delete a provision regarding filing a notice by June 1, 1999, which is no longer applicable.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Galvin has also determined that for each year of the first five years the proposed amendments is in effect, the public benefit anticipated as a result of enforcing the amended rule will be ease of use of the rule. There is no anticipated effect on small

businesses as a result of adopting the amended rule. There is no economic cost anticipated to individuals or credit unions for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 20, 2006, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the proposed amendment is Texas Finance Code, §123.002.

§91.4002. Transactional Web Site Notice Requirement; and Security Review.

(a) - (b) (No change.)

~~[(c) If a credit union has established a transactional web site before the effective date of this rule, it must file a notice describing its activity by June 1, 1999.]~~

(c) ~~[(d)]~~ Credit unions, which have a transactional web site, must provide for a review of the adequacy of the web site's security measures at least once every two years. The scope of the review should cover the adequacy of physical and logical protection against unauthorized access including denial of service and other forms of electronic access. If the credit union outsources this technology platform, it can rely on testing performed for the service provider to the extent it satisfies the scope requirements of this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 837-9236

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SUBCHAPTER N. EMERGENCY OR PERMANENT CLOSING OF OFFICE OR OPERATION

7 TAC §91.5001

The Credit Union Commission proposes amendments to §91.5001, concerning emergency closing. The title of the subchapter is amended to more accurately reflect what the rules pertain to in Subchapter N. The amendments add provisions regarding maintaining a report of emergency contact information with the Department and include backup systems in the definition of an emergency disruption.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Galvin has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amended rule will be increased ability to locate and evaluate the status of credit unions following an emergency closure. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to individuals or credit unions for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 20, 2006, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the proposed amendments is Texas Finance Code, §122.012.

§91.5001. Emergency Closing.

(a) - (c) (No change.)

(d) Each credit union shall maintain on file with the department a report of emergency contact information pertaining to its officers, directors, and committee members in such form as the commissioner may prescribe.

(e) ~~[(d)]~~ In this chapter, the following words and terms shall have the following meanings:

(1) Emergency--means a condition or occurrence that physically interferes with the conduct of normal business at the offices of a credit union or of a particular credit union operation or that poses an imminent or existing threat to the safety or security of persons, property, or both. The term includes a condition or occurrence arising from:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, ice or snow storm;

(B) labor dispute or strike;

(C) disruption or failure of utilities, transportation, communication or information systems and any applicable backup systems;

(D) shortage of fuel, housing, food, transportation, or labor;

(E) robbery, burglary, or attempted robbery or burglary;

(F) epidemic or other catastrophe; or

(G) riot, civil commotion, enemy attack, or other actual or threatened act of lawlessness or violence.

(2) Officer in charge--means the president of the credit union, or a person designated by the president, who shall have the authority to take all necessary and appropriate actions to deal appro-

priately with the emergency. The president of a credit union shall always have an individual designated as an officer in charge during his/her absence or unavailability.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2005.

TRD-200504865
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 837-9236

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7 TAC §91.5002

The Credit Union Commission proposes amendments to §91.5002, concerning effect of closing. The amendments insert a reference to §91.5001 for clarity.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Galvin has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be increased clarity as to when the rule applies. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to individuals or credit unions for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 20, 2006, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the proposed amendments is Texas Finance Code, §122.012.

§91.5002. Effect of Closing.

A day on which a credit union or one or more of its operations is closed during its normal business hours as provided by §91.5001 of this title (relating to Emergency Closings) [~~chapter~~] shall be deemed a legal holiday for all purposes with respect to any credit union business affected by the closed credit union or credit union operation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2005.

TRD-200504864
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 837-9236

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7 TAC §91.5005

The Credit Union Commission proposes new §91.5005, concerning permanent closing of an office. The new rule updates and replaces §91.409 to place all rules related to closures in the same chapter.

The new rule is proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the new rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rule.

Ms. Galvin has also determined that for each year of the first five years the proposed rule is in effect, the public benefits anticipated as a result of enforcing the rule will be ease of use by credit unions and the public. There is no anticipated effect on small businesses as a result of adopting the rule. There is no economic cost anticipated to individual or credit unions for complying with the rule if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, January 20, 2006, at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The new rule is proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the proposed rule is Texas Finance Code, §122.012.

§91.5005. Permanent Closing of an Office.

A credit union may permanently close any of its established offices or service facilities. The credit union shall provide notice to its members and the department no later than 60 days prior to the proposed closing. The credit union shall also post a notice to members in a conspicuous manner on the premises of the effected office or service facility at least 30 days prior to the proposed closing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2005.

TRD-200504863

Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 837-9236

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER A. GENERAL REQUIREMENTS AND DEFINITIONS

16 TAC §8.1

The Commission proposes amendments to §8.1, relating to General Applicability and Standards. Section 8.1(b) concerns minimum safety standards and adopts by reference the United States Department of Transportation's (USDOT) pipeline safety standards found in 49 U.S.C. §§60101, *et seq*.; 49 Code of Federal Regulations (CFR) Part 191, Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports; 49 CFR Part 192, Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards; 49 CFR Part 193, Liquefied Natural Gas Facilities: Federal Safety Standards; 49 U.S.C. §§60101, *et seq*.; 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline; and 49 CFR Part 199, Drug and Alcohol Testing. The current rule adopts the federal pipeline safety standards as of September 14, 2004; the proposed amendment will show this date as July 1, 2005. The federal safety rule amendments that will be adopted by reference are summarized in the following paragraphs.

Under the USDOT's new Pipeline and Hazardous Materials Safety Administration (PHMSA), in accordance with the Norman Y. Mineta Research and Special Programs Improvement Act which reorganized the Department's pipeline and hazardous materials safety programs into the new PHMSA, the amendments, published at 70 Federal Register (FR) 11135, revise all references to the former Research and Special Programs Administration (RSPA) in 49 CFR Parts 190 through 199 to reflect the creation of PHMSA. The final rule also updated the Office of Pipeline Safety's internet and mailing addresses, docket procedures, titles, section numbers, penalty consideration and cap adjustments, terminology, and other changes conforming Part 190 with the Pipeline Safety Improvement Act of 2002. The amendments also reflect the changed organizational posture of the agency and update the Part 190 enforcement procedures to reflect current public law. The final rule did not impose any new operating requirements on pipeline owners and operators. The final rule was effective March 8, 2005.

USDOT's Amendment Nos. 192-99 and 195-83, published at 70 FR 35041, corrects a final rule published by the Pipeline and Hazardous Materials Safety Administration (PHMSA) on May 19, 2005 (70 FR 28833). That final rule amended requirements for pipeline operators in 49 CFR Parts 192 and 195 to develop and implement public awareness programs and incorporate by reference the guidelines of the American Petroleum Institute (API) Recommended Practice (RP) 1162. The document was assigned the amendment numbers 192-100 and 195-84, which were already assigned to different amendments. The final rule corrects the amendment numbers and the language amending Part 192 so that it is consistent with Part 195. The effective date was June 20, 2005.

Amendment Nos. 192-101 and 195-85, published at 70 FR 28833, amend the requirements for pipeline operators to develop and implement public awareness (also known as public education) programs. The changes are part of PHMSA's Office of Pipeline Safety's broad pipeline communications initiative to promote pipeline safety. Promoting pipeline safety requires enhanced communications by pipeline operators with the public to increase public awareness of pipeline operations and safety issues. The amendments for developing and implementing public awareness programs address the requirements of the Pipeline Safety Improvement Act of 2002 and incorporate by reference the guidelines provided in API Recommended Practice 1162, "Public Awareness Programs for Pipeline Operators." The effective date for this final rule was June 20, 2005.

The Commission finds that its adoption of Amendment Nos. 192-99 and 195-83, and Amendment Nos. 192-101 and 195-85, meets the requirements of Section 17 of House Bill (HB) 2161, 79th Legislature, Regular Session (2005), which states that the Commission may not adopt safety standards under Texas Utilities Code, §121.201(a) or Texas Natural Resources Code, §117.012(a), as amended by HB 2161, until the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation adopts the rules published at 69 FR 35279 (to be codified at 49 CFR Parts 192 and 195, as proposed June 3, 2004) or other rules pertaining to public education programs for hazardous liquid and gas pipeline operators.

Amendment No. 192-94, published at 70 FR 3147 by the Research and Special Programs Administration (RSPA), is a direct final rule that makes a minor editorial correction to the definition of "transmission line" in the federal safety regulations for natural gas pipelines. The correction is intended to clarify that gathering lines are excluded from the definition of transmission line. Because gathering lines have never been included in the definition of transmission line, the correction will not result in any substantive change in the definition. The effective date was May 6, 2005.

Amendment Nos. 192-100 and 195-84, published at 70 FR 10332, adopt a direct final rule from RSPA's Office of Pipeline Safety requiring operators of gas and hazardous liquid pipelines to conduct programs to qualify individuals who perform certain safety-related tasks on pipelines. Congress addressed these programs through an amendment to the federal pipeline safety law (49 U.S.C. Chap. 601). In accordance with that amendment, the direct final rule codifies the new program requirements concerning personnel training, notice of program change, government review and verification of programs, and use of on-the-job performance as a qualification method. The direct final rule became effective July 1, 2005.

Mary McDaniel, Director, Safety Division, has determined that for the first five years the amendments will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Ms. McDaniel has determined that for each year of the first five years that the amendments will be in effect, the primary public benefit will be the continuation of the Commission's Pipeline Safety program to ensure public safety with regard to pipeline op-

erations and accurate reference to federal pipeline safety standards enforced by the Commission.

The Commission anticipates that there will be no additional cost to individuals, small businesses, or micro-businesses to comply with the proposed amendments. The proposed amendments to §8.1 would simply change the date as of which the Railroad Commission has adopted by reference the federal pipeline safety rules. Texas pipelines are already required to comply with the federal pipeline safety rules. Under 49 U.S.C. §§60101, *et seq*., the Railroad Commission is authorized to enforce pipeline safety laws so long as the state's scheme of regulation is as strict as or stricter than that of the federal system. In order to be considered "as strict as or stricter than" the federal scheme of regulation, the state must adopt every federal rule; there are no exceptions for rules of limited application. Therefore, even though the rules already apply in Texas, the Railroad Commission must also adopt the rules as its own.

The public benefit anticipated as a result of the enforcement of these amendments will be enhanced public safety and increased awareness of safety requirements in the transportation of natural gas, carbon dioxide, and hazardous liquids because the rules will be correctly stated.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*; comments should refer to Docket No. 9618. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. McDaniel at (512) 463-7166. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §117.012, which requires the Commission to adopt rules that include safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities; and to adopt rules regarding public education and awareness concerning hazardous liquid or carbon dioxide pipeline facilities and community liaison for the purpose of responding to an emergency concerning a hazardous liquid or carbon dioxide pipeline facility; Texas Utilities Code, §§121.201 - 121.210, as amended by HB 2161, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated §§60101, *et seq*.; and HB 2161, Section 17, which directs that the Railroad Commission of Texas may not adopt safety standards under Texas Utilities Code, §121.201(a), or Texas Natural Resources Code, §117.012(a), as amended by HB 2161, until the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation adopts the rules published at 69 Federal Register 35279 (2004) (to be codified at 49 CFR Parts 192 and 195) (proposed June 3, 2004) or other rules pertaining to public education programs for hazardous liquid and gas pipeline operators.

Texas Natural Resources Code, §§81.051, 81.052, and 117.012; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated §§60101, *et seq*., are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 117.012; Texas Utilities Code, §§121.201 - 121.210; and 49 United States Code Annotated §§60101, *et seq*.

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated Chapter 601.

Issued in Austin, Texas, on October 25, 2005.

§8.1. General Applicability and Standards.

(a) (No change.)

(b) Minimum safety standards. The Commission adopts by reference the following provisions, as modified in this chapter, effective July 1, 2005 [~~September 14, 2004~~].

(1) - (3) (No change.)

(c) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 25, 2005.

TRD-200504816
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 463-7008

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER O. UNBUNDLING AND MARKET POWER

DIVISION 2. INDEPENDENT ORGANIZATIONS

16 TAC §25.365

The Public Utility Commission of Texas (commission) proposes new §25.365, relating to an Independent Market Monitor (IMM) for the Wholesale Electric Market in the Electric Reliability Council of Texas (ERCOT). The proposed new rule is necessary to protect the public interest by detecting and preventing market manipulation strategies, market rule violations, and market power abuses in the ERCOT wholesale electric market and by recommending measures to enhance the efficiency of the wholesale market. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 31111 is assigned to this proceeding.

The proposed new rule, if adopted, will implement the requirements of Senate Bill 408. The bill requires that the commission adopt rules that: 1) define the responsibilities and authority of the IMM; 2) establish the standards for funding the IMM; 3) specify the staffing requirements and qualifications for the IMM; and 4) establish ethics standards for the IMM. The proposed rule also specifies the relationship of the IMM to the commission and to ERCOT.

Mr. Jeffrey T. Pender, Attorney, Legal Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Pender has determined that for each year of the first five years the proposed section is in effect the public benefits expected as a result of adoption of the proposed rule will be the facilitation of a more effective and efficient operation of the wholesale electric markets. The Texas Legislature has determined that Texas should change from a system in which electric power is fully regulated by the commission to a system in which competitive forces will determine the rates, operations, and services that are available to the public. The Legislature has directed that the commission put in place an independent market monitor to oversee the activities of market participants in the newly instituted wholesale electric market in ERCOT to ensure that the market remains free of strategic manipulations and market power abuses and brings the benefits of competition to electric customers. The public benefits anticipated as a result of this rule include the protection of customers and market participants from market manipulations, market rule violations, and market power abuses, and the increased efficiency of market operations.

There is no anticipated economic cost to persons who are required to comply with the proposed section.

There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed section.

Mr. Pender has also determined that for each year of the first five years the proposed section is in effect there should be no negative effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rulemaking under the Administrative Procedure Act, Texas Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Monday, January 9, 2006, at 9:30 a.m.

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 31 days after publication. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 31111.

When commenting on specific subsections of the proposed rule, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.1515, which requires that the commission select an entity to act as the commission's wholesale electric market monitor to detect and prevent market manipulation strategies and recommend measures to enhance the efficiency of the wholesale market; PURA §35.004, which requires that the commission ensure that ancillary services necessary to facilitate the transmission of electric energy are available at reasonable prices with terms and conditions that are not unreasonably preferential, prejudicial, predatory, or anticompetitive; PURA §39.001, which establishes the Legislative policy to protect the public interest during the transition to and in the establishment of a fully competitive electric power industry; PURA §39.101, which establishes that customers are entitled to protection from unfair, misleading, or deceptive practices and directs the commission to adopt and enforce rules to carry out this provision and to ensure that retail customer protections are established that afford customers safe, reliable, and reasonably priced electricity; PURA §39.151, which requires the commission to oversee and review the procedures established by an independent organization, directs market participants to comply with such procedures, and authorizes the commission to enforce such procedures; and PURA §39.157, which directs the commission to monitor market power associated with the generation, transmission, distribution, and sale of electricity and provides enforcement power to the commission to address any market power abuses.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.1515, 35.004, 39.001, 39.101, 39.151, 39.157, 39.356, and 39.357.

§25.365. Independent Market Monitor.

(a) Purpose. The purpose of this section is to define the responsibilities and authority of the independent market monitor (IMM) for the Electric Reliability Council of Texas (ERCOT) wholesale markets, establish the standards for funding the IMM, specify the staffing requirements and qualifications for the IMM, and establish ethics standards for the IMM. This section also specifies the relationship of the IMM to the commission and to ERCOT.

(b) Definitions. The following words and terms when used in this section shall have the following meaning, unless the context indicates otherwise:

(1) IMM--Depending on the context, the office of the IMM or the director of the IMM and its staff.

(2) Market participant--Any person or entity participating in the power region's wholesale markets, including, but not limited to, a load-serving entity (including a municipally-owned utility and an electric cooperative), a retail electric provider, a qualified scheduling entity, a power marketer, a transmission and distribution utility, a power generation company, a qualifying facility, an exempt wholesale generator, a load acting as a resource, and any entity conducting planning, scheduling, or operating activities on behalf of such market participants.

(3) Market--The course of commercial activity by which the exchange of goods or services is effected. As used in this section, the term may refer to a market or a submarket of a market.

(4) Protocols--The documents that contain the scheduling, operating, planning, reliability, and settlement procedures, standards, and criteria in effect in the markets administered by ERCOT.

(c) Objectives of market monitoring. The IMM shall monitor wholesale market activities so as to:

(1) Detect and prevent market manipulation strategies and market power abuses; and

(2) Evaluate the operations of the wholesale market and the current market rules and proposed changes to the market rules, and recommend measures to enhance market efficiency.

(d) Responsibilities of the IMM. The IMM shall gather and analyze information and data as needed for its market monitoring activities. The duties and responsibilities of the IMM may include:

(1) Monitoring all markets in the power region for energy, capacity services, and congestion revenue rights, and ERCOT's protocols, procedures and practices that affect supply, demand, and the efficient functioning of such markets;

(2) Developing and regularly monitoring market screens and indices to identify abnormal events in the power region's wholesale markets;

(3) Analyzing events that fail the screens, and other abnormal activities and market events, using computer simulation and advanced quantitative tools as necessary;

(4) Developing and regularly monitoring performance measures to evaluate market participants' and ERCOT's compliance with the protocols and the effectiveness of ERCOT's system operations;

(5) Conducting market power tests and other analyses related to market power determination;

(6) Analyzing ERCOT's market rules and proposed changes to those rules to identify opportunities for strategic manipulation and other economic inefficiencies, as well as potential areas of improvement to harmonize reliability standards and market efficiency;

(7) Conducting investigations of specific market events;

(8) Providing expert testimony services on behalf of commission staff in enforcement proceedings or other commission proceedings;

(9) Maintaining a market oversight website to share market information with the public;

(10) Preparing market monitoring reports as required under subsection (k) of this section; and

(11) Performing any additional duties required by the commission.

(e) Authority of the IMM.

(1) The IMM has the authority to conduct monitoring and related activities but has no enforcement authority.

(2) The IMM has the authority to require submission of any information and data it considers necessary to fulfill its monitoring and investigative responsibilities by ERCOT and by market participants. Market participants and ERCOT shall provide complete, accurate, and timely responses to all IMM requests for documents, data, information, and other materials.

(3) The IMM may require that each market participant designate a contact person that can answer questions the IMM may have regarding a market participant's operations or market activities.

(f) Selection of the IMM. ERCOT and the commission shall contract with an entity selected by the commission to act as the commission's wholesale market monitor. The IMM shall be established as an office independent from ERCOT, and is not subject to the supervision of ERCOT with respect to its monitoring and investigative activities.

(g) Funding of the IMM. The budget and expenditures of the IMM are subject to commission supervision and oversight. Financial controls and reporting procedures shall be implemented by the IMM and ERCOT to ensure that expenditures are consistent with the approved budget and with this section.

(1) ERCOT shall fund the operations of the IMM using money from the fee authorized by PURA §39.151.

(2) The funding of the IMM shall be sufficient to ensure that the IMM has the resources and expertise necessary to monitor the wholesale electric market effectively, as determined by the commission.

(3) ERCOT shall maintain separate accounts of expenditures in support of the IMM.

(4) ERCOT shall directly assign costs to the IMM whenever possible. To the extent overhead and shared expenses cannot be directly assigned, ERCOT shall allocate such expenses to the IMM based on appropriate cost causation factors. ERCOT shall maintain all records and workpapers necessary to substantiate all direct charges and allocations to the IMM.

(h) Staffing requirements and qualification of IMM director and staff.

(1) The director of the IMM shall have the qualifications necessary to oversee performance of the duties and responsibilities in subsection (c) of this section. The staff of the IMM shall have the qualifications needed to perform the market monitoring functions in subsection (c) of this section. The IMM director and staff shall be subject to background security checks as determined by the commission.

(2) The staff of the IMM shall collectively possess a set of technical skills necessary to perform market monitoring functions, which typically includes economics, with a focus on market analysis and market competitiveness; power engineering; statistics and programming; and modeling, with a focus on optimization modeling.

(i) Ethics standards governing the IMM director and staff.

(1) During the period of a person's service with the IMM, the IMM director and an IMM employee shall not:

(A) have a professional or financial interest in a market participant or an affiliate of a market participant; or own shares in a company that provides consulting services to a market participant;

(B) serve as an officer, director, partner, owner, employee, attorney, or consultant for ERCOT or a market participant or an affiliate of a market participant;

(C) directly or indirectly own or control securities in a market participant, an affiliate of a market participant, or direct competitor of a market participant or affiliate, except that it is not a violation of this rule if the IMM director or an IMM employee indirectly owns an interest in a retirement system, institution or fund that in the normal course of business invests in diverse securities independently of the control of the IMM director or employee; or

(D) accept a gift, gratuity, or entertainment from ERCOT, a market participant, affiliate of a market participant, or an employee or agent of a market participant or affiliate of a market participant.

(2) The IMM director or an IMM employee shall not directly or indirectly solicit, request from, suggest, or recommend to a market participant or affiliate of a market participant, or an employee or agent of a market participant or affiliate of a market participant, the employment of a person by a market participant or affiliate.

(3) The commission may impose post employment restrictions for the IMM and its employees.

(j) Confidentiality standards governing the IMM director and staff.

(1) The IMM shall protect confidential information and data in accordance with the confidentiality standards established in PURA, the protocols, commission rules, and other applicable laws.

(2) Unless otherwise notified by the commission legal staff, the IMM may not communicate with a market participant or with an ERCOT board member, officer, or employee concerning a particular subject matter once the commission legal staff notifies the IMM that the subject matter is, or may be, the subject of an investigation or enforcement proceeding.

(k) Reporting requirement. The IMM shall prepare and submit to the commission the following reports:

(1) Daily, monthly, and quarterly reports on prices and congestion;

(2) An annual report on the state of the market, which will include an assessment of the competitiveness of the market; an assessment of the efficiency of ERCOT's management of the balancing energy, ancillary services, and congestion rights markets; an evaluation of the effectiveness of congestion management by ERCOT; an evaluation of whether there are inappropriate incentives, flaws, inefficiencies, and opportunities for manipulation in the market design; and any recommendations for improving the market design; and

(3) Periodic or special reports on market conditions or specific events as directed by the commission.

(l) Communication between the IMM and the commission. The personnel of the IMM may communicate with commission staff on any matter without restriction. The IMM shall:

(1) Immediately report directly to the commission abnormal bids or offers, abnormal operational or market behavior by either a market participant or ERCOT, any potential market manipulation, and any discovered or potential violations of commission rules or rules of ERCOT;

(2) Regularly communicate with the commission staff, and keep the commission updated regarding its activities, findings, and observations;

(3) Coordinate with the commission to identify priorities;

(4) Coordinate with the commission to assess the resources and methods for monitoring the wholesale market effectively, including consulting needs; and

(5) Refer instances of possible market manipulation, market power abuse, and violations of commission rules or ERCOT protocols to the commission.

(m) ERCOT's responsibilities and support role. ERCOT shall provide the IMM director and staff full access to its operations centers, staff, and records relating to operations, settlement, and reliability. ERCOT shall designate liaisons to facilitate communications with the IMM on ERCOT's operations and information technology.

(1) ERCOT shall develop and operate an information system to collect and to store data required by the protocols, and shall provide adequate communication equipment and necessary software packages to enable the IMM to establish electronic access to the information system and to facilitate the development and application of quantitative tools necessary for the market monitoring function. Data from ERCOT's source systems must be capable of being replicated in near real time and available for query by the IMM until data are archived and archived data are accessible for high-speed information searches. Data archives must be designed to accommodate remote access by the IMM and the commission staff at any time.

(2) On an ongoing basis, ERCOT shall implement necessary procedures for the accurate collection and storage of data in the data archives and accurate communication of those data for use by the commission staff and the IMM.

(3) The IMM may review the catalogs of information and data and data collection verification criteria developed by ERCOT and may propose changes, additions, or deletions to the catalogs and criteria to facilitate the market monitoring function. In so doing, the IMM may require database items or evaluation criteria for inclusion in the pertinent catalogs.

(4) ERCOT shall establish procedures to ensure that the IMM may access all data maintained by ERCOT relating to operations, settlements, and reliability.

(5) ERCOT may provide administrative support and goods and services to the IMM, such as office space, payroll, and related services, and information technology support.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504936
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 66. REGISTRATION OF PROPERTY TAX CONSULTANTS

16 TAC §§66.1, 66.10, 66.20, 66.21, 66.25, 66.61, 66.65, 66.70 - 66.72, 66.80, 66.90, 66.100

The Texas Department of Licensing and Regulation ("Department") proposes amendments to 16 Texas Administrative Code, §§66.1, 66.10, 66.20, 66.61, 66.65, 66.70, 66.71, 66.72, 66.80, and 66.90, and new 16 Texas Administrative Code, §§66.21, 66.25 and 66.100, regarding the property tax consultants program.

These proposed rule changes are necessary to update statutory references and conform rule requirements to current law. In addition, the rule changes are needed to reorganize certain provisions for greater clarity and readability and to delete unnecessary provisions. A new continuing education rule is added to make continuing education requirements consistent with 16 Texas Administrative Code, Chapter 59, which contains the Department's general rules for continuing education providers and courses. For greater clarity, rule provisions relating to continuing education and continuing education providers are separated from rule provisions relating to private providers, which offer pre-registration education or upgrade credit for senior property tax consultant registration. The Department in a separate concurrent rulemaking will propose the repeal of certain rules at 16 Texas Administrative Code, Chapter 66, some of which are replaced by these new and amended rules.

Statutory references are updated throughout the existing rules, and references to "commissioner" are removed and replaced by references to "executive director," "department," or "commission" as appropriate. The definition of "private provider" in §66.10 is amended to clarify that this term applies only to providers of education for pre-registration and upgrade credit, not to continuing education providers. A new definition for "professional designation" incorporates the substance of language relocated from §66.20(e). Amended language in §66.20(b) incorporates and simplifies various application requirements from §66.20 and §66.21. New language in §66.20(d) is relocated from §66.21; the change of address reporting requirement is moved to §66.70; and the code of ethics is moved to a new §66.100. New §66.21 is added to consolidate and update requirements for private providers and pre-registration or upgrade education. Such provisions were previously located in repealed §66.62 and §66.63. In §66.21(e) the word "annually" is substituted for "biannually" to change the interval for program reviews from twice every year to one a year.

Proposed §66.25 establishes new continuing education requirements for registrants. Under Texas Occupations Code, §51.405 the Texas Commission of Licensing and Regulation ("Commission") is required to recognize, prepare, or administer continuing education programs for license holders, and a license holder must participate in the programs to the extent required by the Commission to keep the person's license. The new §66.25 is proposed under that statutory provision, and the new rule makes changes to current continuing education requirements in the property tax consultant program. As part of a separate proposed rulemaking, the Department's general requirements for continuing education providers and courses, which are contained in 16 Texas Administrative Code, Chapter 59, will apply to providers and courses in the property tax consultant program. In addition, the proposed new §66.25 establishes requirements that are specific to the property tax consultant program for registrants, providers, and courses. The new rule requires a registrant to complete twelve hours of continuing education in Department-approved courses to renew a registration. The continuing education hours must include two hours of instruction in Texas state law and rules that regulate the conduct of registrants, one hour of instruction in ethics, four hours of instruction in appraisal, and five hours of instruction approved by the Department in property tax consulting. The continuing education hours must be completed during the term of the current registration or, in the case of a late renewal, within the one-year period prior to the date of renewal. A registrant may not receive credit for attending the same course more than once. A registrant is required to retain a copy of the certificate of completion for one year after the date of completion of the course. To be approved by the Department, a provider's course must cover one or more of the required topics. The rule will apply to registration renewals and to providers and courses upon the effective date of the rule. Subsection (j) allows continuing education providers approved under the current rules to continue to offer courses approved under those rules, until December 31, 2006. A registrant who completes such a course will receive credit toward the required continuing education hours.

Subsection (b) of §66.61 is deleted because it does not reflect the current scheduling process for Department examinations. The language that appears in new subsection (b) is amended to clarify that the Department may invoke the full range of administrative sanctions for cheating on an examination. Subsection (c) language is not needed because examination rescheduling is addressed in 16 Texas Administrative Code §60.84. Technical corrections have been made to §66.65, and language in (g) and (h) is deleted as duplicative of or inconsistent with statutory provisions. Language in §66.70(c) is deleted because the code of ethics sufficiently addresses false or misleading advertising. Other provisions are moved to this section from elsewhere. In subsection (c) a specific time frame of 30 days is stated to provide greater clarity and enforceability. A requirement that a registered property tax consultant only offer services to a senior property tax consultant is deleted as inconsistent with statutory requirements. In the heading of §66.72, the word "recognized" is deleted to be consistent with terminology used in the rules. A reference to continuing education is removed from §66.72 to clarify that these requirements pertain to pre-registration and upgrade education. The substance of subsection (b) of §66.64, which is proposed for repeal, is incorporated into §66.72. Subsection (a) of §66.64 is unnecessary in light of the Department's statutory authority to investigate complaints. Section 66.72(c) is changed to require that a private provider provide a certificate to the participant including actual hours attended. The audit provisions of subsections (d) and (e) are enhanced to be more consistent with analogous provisions in Chapter 59 of the title, concerning continuing education providers.

The word "original" is added before "registration fee" in §66.80(c) and (d) for greater clarity, and references to Texas Occupations Code, §1152.053 are added by each applicable fee. Sections 66.82, 66.83, and 66.85 are repealed, and the fees prescribed in those sections are relocated to §66.80. Technical corrections are made to §66.90. Finally, the code of ethics is placed in new §66.100.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments and new rules are in effect there will be no significant costs to the state. There may be some increased workload for Department staff in reviewing continuing education courses because the review process will be somewhat more rigorous than under current rules. However, any increase in costs to the Department is not expected to be significant, and additional revenue from fees established in 16 Texas Administrative Code, Chapter 59 should be sufficient to offset any additional costs. There will be no cost to local government as a result of enforcing or administering the proposed amendments and new rules.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments and new rules are in effect, the public benefit will be that rule requirements for property tax consultants will be clearer and better organized. Continuing education taken by registrants will be subject to minimum standards, consistent with other Department programs. These standards should serve to increase or maintain the skills and competence of registrants, who in turn provide services to the public.

There will be some economic costs to certain persons who are required to comply with the rule changes, including small or micro-businesses. Fees for continuing education providers will be those stated in 16 Texas Administrative Code, Chapter 59, which are somewhat higher than the fees under the current property tax consultant rules. The provider application fee will be $250; the annual renewal fee for a provider will be $250; and the approval fee for each course will be $100 annually. Under current rules the fees are $125 for a provider application and $75 annually for course approval. The Department anticipates that the added cost to providers will not be unduly high relative to the benefits to the public and registrants of enforcing standards for continuing education. The Department anticipates that the cost to registrants of complying with continuing education requirements will decrease because the number of required hours per year is being reduced from twenty to twelve. Therefore, registrants will need to pay providers for fewer hours of education than under current rules. It is unknown whether providers will experience any economic impact from the reduction in required hours. However, the Department believes that twelve hours is a more reasonable requirement for a registration which must be renewed annually.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rules are proposed under Texas Occupations Code, Chapters 51 and 1152, which authorize the Department to adopt rules as necessary to implement those chapters and each law establishing a program regulated by the Department. In particular, Texas Occupations Code, §51.405 requires the Commission to recognize, prepare, or administer continuing education programs for license holders.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1152. No other statutes, articles, or codes are affected by the proposal.

§66.1. Authority

These rules are promulgated under the authority of the Texas Occupations Code, Chapters 51 and 1152 [~~Registration of Property Tax Consultants Act, Texas Civil Statutes, Article 8886, and Texas Civil Statutes, Article 9100~~].

§66.10. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Texas Occupations Code, Chapter 1152 [~~Civil Statutes, Article 8886, Registration of Property Tax Consultants~~].

(2) Cheating--Attempting to obtain, obtaining, providing, or using answers to examination questions by deceit, fraud, dishonesty, or deception while taking a qualification examination.

(3) Private Provider [~~provider~~]--An educational institution that is established, conducted, and primarily supported by a nongovernmental person, as defined by Texas Occupations Code, Chapter 1152 [~~Civil Statutes, Article 8886~~], which meets program and accreditation standards comparable to public institutions of higher education as determined by the Texas Higher Education Coordinating Board, and which offers an educational program or course for pre-registration credit or for upgrade credit towards a senior property tax consultant registration. The term does not include a continuing education provider as defined in Chapter 59 of this title.

(4) Professional Designation--The designation of Certified Member of the Institute (CMI) conferred by the Institute of Property Taxation or another designation recognized by the department.

(5) [~~(4)~~] Real estate property tax consultant--An individual who performs property tax consulting services in connection with property that is real property only and who has registered under Texas Occupations Code, §1152.158 [~~Civil Statutes, Article 8886, §2(f)~~].

(6) [~~(5)~~] Senior property tax consultant--A registered property tax consultant who has met the additional requirements of Texas Occupations Code, Chapter 1152 [~~Civil Statutes, Article 8886~~], and these rules.

§66.20. Registration Requirements--General.

(a) Any person who performs property tax consulting services as defined in Texas Occupations Code, Chapter 1152 [~~Civil Statutes, Article 8886 after September 1, 1992~~] must first become registered with the Texas Department of Licensing and Regulation.

(b) To register or renew a registration, a person must file a completed application on a form provided by the department and pay the applicable fees. [~~All applicants and registrants shall obtain all necessary forms from the Texas Department of Licensing and Regulation~~].

(c) An individual whose registration has expired may renew the registration in accordance with the renewal provisions in Texas Occupations Code, Chapter 51, Subchapter H.

(d) Providing false information on an application is cause for denial and/or revocation of registration [~~All registrants shall promptly report any change of address to the Texas Department of Licensing and Regulation, Licensing and Certification Division, Austin, Texas~~].

[~~(e) It has been determined that the professional designation requirements of Texas Civil Statutes, Article 8886, Section (c)(3) can be met by the designation of Certified Member of the Institute (CMI) conferred by the Institute of Property Taxation.~~]

[~~(f) Individuals who are registered under Texas Revised Civil Statutes, Article 8886 (the Act) shall certify that the registrant has read and submits to the code of ethics as follows:~~]

[~~(1) shall not participate, whether individually, or in concert with others, in any plan, scheme, or arrangement attempting or~~

having as its purpose the evasion of any provision of the Act or commissioner rule;]

[(2) shall not directly or indirectly or in any manner whatsoever lend his/her registration or identification to any person, firm or corporation for the purpose of evading any provision of the Act or commissioner rule;]

[(3) shall exercise reasonable care and diligence to prevent persons under his/her supervision from engaging in conduct which would violate any provision of the Act or commissioner rule;]

[(4) shall not engage in any activity that constitutes dishonesty, fraud, or gross incompetency while performing property tax consulting services;]

[(5) shall promptly report to the commissioner any known violation of the Act or commissioner rule;]

[(6) shall cooperate fully with the commissioner or staff in the investigation of an alleged violation of the Act or commissioner rule;]

[(7) shall not offer or promise anything of value with the intent of inducing a person who is performing a public duty to perform or fail to perform any act related to such public duty;]

[(8) shall not contract for or accept compensation or anything of value for services not performed;]

[(9) shall not knowingly or intentionally engage in any false or misleading conduct or advertising with respect to client solicitation;]

[(10) shall not knowingly furnish inaccurate, deceitful, or misleading information to a client or employer, prospective client or employer or to a public agency or representative of a public agency;]

[(11) shall not reveal information known to be confidential unless the release of such information is authorized by the source or required by law;]

[(12) shall not state or imply that the registrant represents a person or firm that the registrant does not in fact represent;]

[(13) shall not solicit or advertise property tax consulting services by claiming a specific result or stating a conclusion regarding such services without prior analysis of the facts and circumstances pertaining thereto.]

[(g) Individuals who are registered under Texas Civil Statutes, Article 8886, Section 2(f) may not perform property tax consulting services for compensation in connection with a property that is not real property.]

§66.21. Pre-registration and Upgrade Education.

(a) A private provider must be recognized by the department to offer educational programs or courses for pre-registration or upgrade credit.

(b) To be recognized as a private provider, a person must:

(1) file a completed application on a form provided by the department;

(2) pay the applicable fees;

(3) satisfy the department as to the person's ability to administer with honesty, trustworthiness, and integrity educational programs or courses approved by the department; and

(4) provide satisfactory proof that the person is registered with or exempted by the Texas Workforce Commission under Title 40, Texas Administrative Code, Chapter 807, Career Schools and Colleges.

(c) Each educational program or course offered by a private provider must be approved by the department before being offered for pre-registration or upgrade credit.

(d) To obtain department approval for an educational program or course, or in the event of changes to a previously-approved program or course, a private provider must:

(1) submit to the department for evaluation an instructor's manual for the program or course, including:

(A) course description;

(B) learning objectives;

(C) evaluating techniques;

(D) outline of the subject matter;

(E) instructional strategies;

(F) course participant handouts; and

(G) bibliography or source of update subject matter; and

(2) satisfy the department that the subject matter of the program or course is appropriate for the education of property tax consultants and is current and accurate.

(e) Each educational program or course shall be reviewed annually.

(f) The executive director may recognize any appropriate program or course that is currently approved by a department or agency of the State of Texas.

§66.25. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a registration, a registrant must complete 12 hours of continuing education in courses approved or recognized by the department. The continuing education hours must include the following:

(1) two hours of instruction in Texas state law and rules that regulate the conduct of registrants;

(2) one hour of instruction in ethics;

(3) four hours of instruction in appraisal; and

(4) five hours of instruction approved by the department in property tax consulting.

(c) The continuing education hours must have been completed within the term of the current registration, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one year period immediately prior to the date of renewal.

(d) A registrant may not receive continuing education credit for attending the same course more than once.

(e) A registrant shall retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the registrant, the department may examine the registrant's records to determine compliance with this subsection.

(f) To be approved under Chapter 59 of this title, a continuing education provider's course must be dedicated to instruction in one or more of the topics listed in subsection (b) of this section, and the

continuing education provider must be registered under Chapter 59 of this title.

(g) A continuing education course recognized by the department under Texas Occupations Code, §1152.204(b) is not required to be approved under Chapter 59 of this title, and the provider of such a course is not required to be registered under Chapter 59 of this title. To be recognized, the course must be dedicated to instruction in one or more of the topics listed in subsection (b) of this section and will be recognized for continuing education credit accordingly.

(h) Except as provided in subsection (i) of this section, this section shall apply to continuing education providers and courses for registrants upon the effective date of this section.

(i) A continuing education provider that was approved by the department before the effective date of this section may continue to offer for credit continuing education courses that were approved by the department before the effective date of this section, until December 31, 2006.

§66.61. Responsibilities of Department--Examinations.

(a) The standard for passing the senior property tax consultant examination shall be a score of at least 70%.

[~~(b) The examinations shall be given twice a year but may be given at other times at the discretion of the commissioner.~~]

[~~(c) Examination fees will be refunded only if the applicant has given proper notice that the examination will not be taken. Written notice must be received in the Austin office a minimum of five days prior to the scheduled examination.~~]

(b) [~~(d)~~] Cheating on an examination is grounds for administrative sanctions, up to and including denial or revocation of a registration [~~license~~].

§66.65. Advisory Council.

(a) The purpose of the Property Tax Consultants Advisory Council is to advise the commission [~~commissioner~~] on standards of practice, conduct, and ethics for registrants, fees, examination contents, and standards of performance for senior property tax consultant examinations, recognition of continuing educational programs and courses, and establishing educational requirements for initial applicants.

(b) Recommendations of the council will be transmitted to the commission [~~commissioner~~] through the executive director [~~of policies and standards~~].

(c) Council meetings are called by the presiding officer [~~chair~~] or at the call of a majority of its members or the executive director. [~~Meetings in excess of two per year shall be authorized by the commissioner or the commissioner's designee.~~]

(d) Expenses reimbursed to council members shall be limited to authorized expenses incurred while on council business and traveling [~~travelling~~] to and from council meetings. The least expensive method of travel should be used. Expenses can be reimbursed to council [~~board~~] members only when the legislature has specifically appropriated money for that purpose, and only to the extent of the appropriation.

[~~(e) Expenses related to subcommittee meetings will be reimbursed only if authorized by the commissioner or the commissioner's designee. These expenses will be reimbursed only to the council members appointed to the subcommittee or requested by the chair to assist or appear before the subcommittee.~~]

(e) [~~(f)~~] Expenses paid to council members shall be limited to those allowed by the State of Texas Travel Allowance Guide and Texas Department of Licensing and Regulation policies governing travel allowances for employees.

[~~(g) The council shall consist of three property tax consultant members as specified in the Act and three consumers of services of property tax consultants. The commission may appoint not more than one member who is qualified for exemption under the Act, §2(d)(3).~~]

[~~(h) Members of the council serve for staggered three-year terms with the terms of a property tax consultant member and a consumer member expiring February 1 of each year. Initial terms under this rule will be established so that one property tax consultant position and one consumer position will expire on February 1 of the years 1996, 1997 and 1998.~~]

§66.70. Responsibilities of Registrant--General.

(a) A registrant may not allow an employee or associate to perform property tax consulting services without first obtaining registration.

(b) All registrants shall notify service recipients of the name, mailing address, and telephone number of the department. The registrant may use a sticker or rubber stamp to convey the required information. The notification shall be included on any contract or on a sign prominently displayed at each place of business.

(c) All registrants shall report any change of address to the department within 30 days after the change. [~~Misleading and untruthful advertising by a registrant is prohibited.~~]

(d) Individuals who are registered under Texas Occupations Code, §1152.158 may not perform property tax consulting services for compensation in connection with a property that is not real property.

(e) A registered property tax consultant must be employed by or have an association with a registered senior property tax consultant and be under the direct supervision of the senior property tax consultant. There must be a legitimate employee/employer relationship or business association established. This requirement does not apply to a real estate property tax consultant.

(f) A registered property tax consultant shall notify the department in writing of any change in employment or association within 30 days after the change.

§66.71. Responsibilities of Registrant--Records.

(a) The registrant must allow the department [~~Department~~], as part of an inspection or investigation, to enter his business premises during reasonable business hours to examine and copy any records that are pertinent to an inspection or investigation being conducted.

(b) Client records shall be maintained for not less than three years following the date last action was taken or service performed on behalf of the client.

§66.72. Responsibilities of Registrant--[~~Recognized~~] Private Provider.

(a) The following statement shall be used on all advertising and registration forms: "This course has been approved by the Texas Department of Licensing and Regulation for _____ pre-registration [~~continuing~~] education hours including _____ hours of legal education pertaining to Property Tax Consulting. This course has been approved for _____ credits which count toward qualification for Senior Property Tax Consultant."

(b) Providers shall retain student attendance records for a period of three years, make copies available to former students, and provide copies to the department upon request.

(c) A certificate [~~participant roster~~] shall be provided to the participant [~~department~~] and shall include actual hours attended.

(d) To determine compliance with this chapter, the department may perform on-site audits of any program or course offered by a private provider. Audits may be conducted without prior notice to the private provider, and department employees may enroll and attend a program or course without identifying themselves as department employees. A department employee performing an audit may not be required to pay any fee to a private provider for enrolling in or attending a program or course.

(e) [~~(d)~~] Private providers and [~~Providers or~~] instructors shall fully assist any employee of the department in the performance of an audit or investigation of complaint, and shall provide requested information within the time frame set by the department.

§66.80. Fees.

(a) The non-refundable original application fee for a property tax consultant is $50.

(b) The non-refundable original application fee for a senior property tax consultant is $75.

(c) The refundable original registration fee for a property tax consultant is $225. This fee includes a $200 professional fee, as assessed by Texas Occupations Code, §1152.053.

(d) The refundable original registration fee for a senior property tax consultant is $240. This fee includes a $200 professional fee, as assessed by Texas Occupations Code, §1152.053.

(e) The fee for the timely renewal of a property tax consultant's, senior property tax consultant's, and real estate property tax consultant's registration is $275. This fee includes a $200 professional fee, as assessed by Texas Occupations Code, §1152.053.

(f) A $150 fee, refundable in accordance with §60.84 of this title, will be charged for each examination. [~~The professional fee is assessed under the authority of §1152.053 of the Texas Occupations Code.~~]

(g) A $25 fee will be charged for issuing a duplicate registration.

(h) [~~(g)~~] Late renewal fees for registrations issued under this chapter are provided for in §60.83 of this title (relating to Late Renewal Fees).

(i) The non-refundable application fee for recognition as a private provider is $125.

(j) In addition to the application fee, a private provider shall pay an annual fee of $75, which shall be refunded if the department does not recognize the private provider's educational program or course.

§66.90. Sanctions--Administrative Sanctions/Penalties.

If a person violates the Act, or a rule or order adopted or issued by the commission or executive director [~~commissioner~~] relating to the Act, the department [~~commissioner~~] may institute proceedings to impose administrative sanctions and/or [~~recommend~~] administrative penalties in accordance with Texas Occupations Code, Chapter 51 [~~Civil Statutes, Article 9100,~~] and Chapter 60 of this title (relating to Texas Commission of Licensing and Regulation).

§66.100. Code of Ethics and Professional Responsibility.

(a) A registrant shall not participate, whether individually, or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act or commission rule.

(b) A registrant shall not directly or indirectly or in any manner whatsoever lend his/her registration or identification to any person, firm or corporation for the purpose of evading any provision of the Act or commission rule.

(c) A registrant shall exercise reasonable care and diligence to prevent persons under his/her supervision from engaging in conduct which would violate any provision of the Act or commission rule.

(d) A registrant shall not engage in any activity that constitutes dishonesty, fraud, or gross incompetence while performing property tax consulting services.

(e) A registrant shall promptly report to the department any known violation of the Act or commission rule.

(f) A registrant shall cooperate fully with the department in the investigation of an alleged violation of the Act or commission rule.

(g) A registrant shall not offer or promise anything of value with the intent of inducing a person who is performing a public duty to perform or fail to perform any act related to such public duty.

(h) A registrant shall not contract for or accept compensation or anything of value for services not performed.

(i) A registrant shall not knowingly or intentionally engage in any false or misleading conduct or advertising with respect to client solicitation.

(j) A registrant shall not knowingly furnish inaccurate, deceitful, or misleading information to a client or employer, a prospective client or employer, or a public agency or representative of a public agency.

(k) A registrant shall not reveal information known to be confidential unless the release of such information is authorized by the source or required by law.

(l) A registrant shall not state or imply that the registrant represents a person or firm that the registrant does not in fact represent.

(m) A registrant shall not solicit or advertise property tax consulting services by claiming a specific result or stating a conclusion regarding such services without prior analysis of the facts and circumstances pertaining thereto.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 31, 2005.

TRD-200504974
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 463-6208

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16 TAC §§66.21, 66.22, 66.24, 66.60, 66.62 - 66.64, 66.82, 66.83, 66.85, 66.91

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of rules at 16 Texas Administrative Code, §§66.21, 66.22, 66.24, 66.60, 66.62 - 66.64, 66.82, 66.83, 66.85, and 66.91, regarding the property tax consultants program.

The repeal of these sections is being proposed because they have been deleted either as unnecessary or as inconsistent with statutory requirements, combined with other sections for clarity, or deleted to implement statutory changes to Texas Occupations Code, Chapter 1152.

The Department in a separate concurrent rulemaking action will propose new rules and amendments to existing rules at 16 Texas Administrative Code, Chapter 66 that will replace some of the rules affected by the repeal.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of the repeal.

Mr. Kuntz also has determined that for each year of the first five-year period the repeal is in effect, the public benefit will be less redundancy in that unnecessary rule language has been deleted.

There will be no effect on small or micro-businesses as a result of the proposed repeal. There are no anticipated economic costs to persons required to comply with the proposed repeal.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under Texas Occupations Code, Chapters 51 and 1152, which authorize the Department to adopt rules as necessary to implement those chapters and each law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51 and 1152.

§66.21. Registration Requirements.

§66.22. Continuing Education.

§66.24. Licensing Requirements--Examinations.

§66.60. Responsibilities of Department--Investigations.

§66.62. Responsibilities of the Department--Recognizing Private Providers.

§66.63. Responsibilities of the Department--Recognizing Courses and Programs.

§66.64. Responsibilities of Department--Enforcement.

§66.82. Fees--Duplicate Registration.

§66.83. Fees--Examination.

§66.85. Recognized Private Provider Fee.

§66.91. Sanctions--Revocation, Suspension, or Denial Because of Criminal Conviction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 31, 2005.

TRD-200504975
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 463-6208

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PART 8. TEXAS RACING COMMISSION

CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING

SUBCHAPTER D. DRUG TESTING

DIVISION 3. PROVISIONS FOR HORSES

16 TAC §319.363

The Texas Racing Commission proposes a new rule, §319.363, relating to testing for total carbon dioxide. The new rule is in response to the increasing practice of "milkshaking." Lactic acid, which is produced by intense exercise, is a factor in causing fatigue; however, lactic acid can be neutralized through the administration of bicarbonate-containing or other alkalinizing substances. When the bicarbonate-containing or other alkalinizing substances are mixed with other additives, they take on a white, frothy appearance which gives them their name as "milkshakes." Milkshaking affects the performance of a horse because it alters the horse's normal physiological state. The premise of milkshaking is based on the lowering of the harmful effects of lactic acid by raising the pH of the body. The intent of the use is to unlawfully influence the outcome of a race by altering or manipulating the performance of the horse through the effect of bicarbonate-containing or other alkalinizing substances on the general body metabolism. Bicarbonate-containing or other alkalinizing substances have an effect of countering the lactic acid naturally produced by horses during high-speed performances or exercise. A number of studies have found that a high concentration of lactic acid in the blood and muscle is correlated with fatigue. Therefore, administration of milkshakes helps to negate the effect of lactic acid produced, stops the decrease in pH, and thereby, unlawfully influences the outcome of a race. The use of bicarbonate-containing or other alkalinizing substances can be detected by testing the total carbon dioxide level in the horse's serum. The Texas Racing Commission does not currently test a horse's serum for total carbon dioxide levels. This new rule will address the milkshaking problem in order to protect the integrity of racing and to protect the horse by testing and penalizing for the use of bicarbonate-containing or other alkalinizing substances by measuring the total carbon dioxide levels in a horse's serum. Specifically, the new rule prohibits the administration of any bicarbonate-containing or other alkalinizing substance which causes an excess level of total carbon dioxide at or above 39 millimoles per liter in a race horse serum specimen. The rule authorizes random and for cause testing. A split specimen is available to rebut the original test results; however, because of the short lifespan of the sample with respect to total carbon dioxide levels, special provisions apply.

Charla Ann King, Executive Secretary for the Texas Racing Commission, has determined that for each of the first five years that the rule will be in effect, there will be no fiscal implications for local government as a result of enforcing or administering the new rule. Ms. King has also determined that for each of the first five years the new rule will be in effect, there will be fiscal implications for state government as a result of enforcing or administering the new rule. There will be a loss of revenue due to the increased cost of drug testing for the prohibited substance which results in a reduction in the amount of "outs" funding (winning mutuel tickets that remain uncashed after the end of a race meeting) reverting to the Texas Racing Commission Fund after the costs of drug testing are paid.

Ms. King has also determined that for each of the first five years the new rule is in effect, the anticipated public benefit will be that pari-mutuel racing will be of the highest caliber, will be conducted with the utmost integrity, and will be safe for the racing animals. The costs of the drug testing for the bicarbonate-containing or other alkalinizing substances ($9.50 per sample plus incidentals for labeling and test tubes) will be paid through the "outs." However, if the increase in drug testing costs exceeds the amount of "outs" available to pari-mutuel racetracks to pay the testing costs, a pari-mutuel horse racetrack may be required to pay additional money out of their operating budget to cover the drug testing costs. The amount of "outs" will vary from racetrack to racetrack and it is not possible to determine the amount a particular racetrack will be potentially required to pay in order to cover the drug testing costs. The proposal has no effect on the state's agricultural, horse breeding, greyhound breeding, or greyhound training industries. The proposal may have an effect on the horse training industry in that the new rule limits the type of substances that a trainer may administer to racehorses. In addition, the trainer may also have to pay $100 for testing plus shipping fees (estimated at $50) if the trainer requests a split specimen test.

Comments on the proposal may be submitted on or before December 11, 2005 to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, TX 78711-2080.

The new rule is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to make rules relating exclusively to horse and greyhound racing, §3.07, which authorizes the Commission to make rules relating to laboratory charges for medication or drug testing, and §3.16, which authorizes the Commission to make rules prohibiting the unlawful influence on the outcome of a race and to implement testing programs.

The new rule implements Texas Civil Statutes, Article 179e.

§319.363. Testing for Total Carbon Dioxide.

(a) Findings and Presumptions.

(1) The commission finds that a total carbon dioxide level of 39 millimoles per liter or more in equine serum can be achieved only through the administration, by any means, of a bicarbonate-containing substance or other alkalinizing substance.

(2) A horse entered or participating in a race may not be administered a bicarbonate-containing substance or other alkalinizing substance which causes it to carry in its body an excess level of total carbon dioxide.

(3) A positive finding by a chemist of total carbon dioxide level at or above 39 millimoles per liter in a race horse serum specimen is an excess level of total carbon dioxide and prima facie evidence that the race horse was administered a bicarbonate-containing substance or other alkalinizing substance in violation of this section.

(b) Testing Authorized. Testing for total carbon dioxide is authorized as listed below:

(1) The executive secretary may implement a program to collect specimens from race horses and test the specimens for the presence of total carbon dioxide. In a program implemented under this section:

(A) Specimens may be collected on a random basis, including randomly selected race dates, randomly selected races, and randomly selected horses; and

(B) Specimens may be collected prerace or postrace; or

(2) The stewards or commission veterinarian may require a horse serum specimen to be taken from any race horse designated for cause by the stewards or commission veterinarian for the purpose of testing for total carbon dioxide.

(c) Split Specimen.

(1) The commission finds that the postrace time period during which total carbon dioxide may be detected in a specimen taken from a race horse is limited. Therefore, to provide a meaningful split specimen program, the testing of a split specimen for total carbon dioxide must occur contemporaneously with the testing of the original specimen.

(2) To ensure the owners and trainers of race horses selected for testing under this section are given the opportunity for a split specimen, the trainer of record for each horse from which a specimen is taken pursuant to this section shall declare in writing whether the trainer requests that the split specimen be tested or waives the right to have the split specimen tested. Failure to request the split specimen test at the test barn within 30 minutes after the post time of the last race for the performance is deemed a waiver of the right to the split specimen.

(3) The split specimen shall be sent for testing to a commission approved and listed laboratory that is acceptable to the trainer of record. The commission staff shall arrange for the transportation of the split specimen in a manner that ensures the integrity of the split specimen.

(4) The trainer of record requesting the split specimen shall pay all costs of transporting and conducting tests on the split specimen.

(5) If the test on the split specimen confirms the findings of the original laboratory, it is a prima facie violation of this section.

(6) If the test on the split specimen does not substantially confirm the findings of the original laboratory, the stewards may not take disciplinary action regarding the test results.

(7) If an act of God, power failure, accident, labor strike, or any other event, beyond the control of the Commission, prevents the split from being tested, the findings of the original laboratory are prima facie evidence of the condition of the horse at the time of the test for total carbon dioxide.

(d) Conflict with Other Rules. To the extent that this rule conflicts with any other commission rule, this rule controls.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 27, 2005.

TRD-200504874
Elizabeth G. Goins
General Counsel
Texas Racing Commission
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 833-6699

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TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §213.30

The Board of Nurse Examiners proposes an amendment to 22 Texas Administrative Code §213.30, concerning Declaratory Order of Eligibility for Licensure. This section addresses the requirements for initial licensure and the eligibility process. The amendment specifically adds new subsection (h) and relates to decisions that are made to deny eligibility for licensure in Texas.

Section 213.30 currently outlines the procedures associated with the Petition for Declaratory Order and obtaining a Declaratory Order. Section 213.30(g) provides:

(g) If the executive director proposes to find the petitioner or applicant ineligible for licensure, the petitioner or applicant may obtain a hearing before the State Office of Administrative Hearings. The Executive Director shall have discretion to set a hearing and give notice of the hearing to the petitioner or applicant. The hearing shall be conducted in accordance with §213.22 of this title (relating to Formal Proceedings) and the rules of SOAH. When in conflict, SOAH's rules of procedure will prevail. The decision of the Board shall be rendered in accordance with §213.23 of this title (relating to Decision of the Board).

Texas Occupations Code §301.454(c) provides:

(c) A person is entitled to a hearing conducted by the State Office of Administrative Hearings if the Board proposes to:

(1) refuse to admit the person to examination;

(2) refuse to issue a license or temporary permit;

(3) refuse to renew a license; or

(4) suspend or revoke the person's license or permit.

An initial denial of licensure is not a final order of the Board. Based on the above referenced authorities, a final denial of eligibility would be pursuant to a formal hearing at the State Office of Administrative Hearings after the applicant produces his/her evidence of eligibility and the Board staff counters with their evidence that the applicant does not meet the criteria for licensure. The ALJ will issue a proposal for decision (PFD) and the PFD would then come back to the full Board for the final decision to be made in open meeting.

The Board has a rule that would prevent an applicant from re-petitioning for eligibility for at least three years from the date of the order denying eligibility. Section 213.27(f) provides:

(f) An individual who applies for initial licensure, reinstatement, renewal, or endorsement to practice professional or vocational nursing in Texas after a negative determination based on a felony conviction, felony probation with or without an adjudication of guilt, or professional misconduct, or voluntary surrender in lieu of disciplinary action and whose application or petition is denied and not appealed is not eligible to file another petition or application for licensure until after the expiration of three years from the date of the Board's order denying the preceding petition for licensure.

The combination of §213.27(f) and §213.30(g) has caused some confusion with those who have petitioned for a declaratory order and who have been proposed to be denied. The Staff interprets §213.27 to mean that after a negative determination following a formal hearing at SOAH, the applicant would not be able to re-petition for licensure "until after three years from the date of the Board's order." This three year bar, however, is not imposed absent a formal hearing at SOAH. Instead, the Board by practice allows a candidate to repetition for licensure after one year from the date of the Executive Director's denial of eligibility if the person has withdrawn their petition and not requested a hearing at SOAH. Many applicants who the executive director or the E&D Committee have proposed to be denied believe they should appeal to SOAH or otherwise wait three years before seeking to re-petition. These petitioners are wanting to address or correct the underlying basis for the denial and do not want to wait three years to prove their character.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Thomas has determined that for each year of the first five years the proposed amendment is in effect, the public benefit will be that nurses will have a better understanding of the Board's current policy and will reduce unnecessary requests for hearings at SOAH. There will be no anticipated economic cost to small businesses or individuals.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, 3-460, Austin, Texas 78701.

The amendment is proposed pursuant to Texas Occupations Code §301.151 which authorizes the board to propose rules necessary for the performance of its duties.

This proposed amendment affects Texas Occupations Code §301.257.

§213.30. Declaratory Order of Eligibility for Licensure.

(a) - (g) (No change.)

(h) A final Board order is issued after an appeal results in a Proposal for Decision from SOAH. The Board's final order must set out each basis for potential ineligibility and the Board's determination as to eligibility. In the absence of new evidence not disclosed by the petitioner or not reasonably available to the Board at the time the order is issued, the Board's ruling determines the person's eligibility with respect to the grounds for potential ineligibility as set out in the order. An individual whose petition is denied by final order of the Board may not file another petition or application for licensure until after the expiration of three years from the date of the Board's order denying the petition or application for licensure. If the applicant or petitioner does not appeal or request a formal hearing at SOAH after a letter proposal to deny eligibility made by the E&D Committee or the executive di-

rector, the applicant or petitioner may re-petition after the expiration of one year from the date of the proposal to deny eligibility, in accordance with this rule and §301.257, Texas Occupations Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 25, 2005.

TRD-200504822
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 305-6823

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CHAPTER 216. CONTINUING EDUCATION

22 TAC §216.3

The Board of Nurse Examiners proposes amendments to 22 TAC §216.3, concerning Continuing Education. Senate Bill 39 (SB 39) (2005) amended the Nursing Practice Act (NPA) by adding §301.306, Forensic Evidence Collection Component in Continuing Education. Under the new language, a licensed nurse "employed to work in an emergency room setting" will be required to complete a minimum of 2 hours of targeted CE in forensic evidence collection not later than September 1, 2008 or the second anniversary of the initial issuance of a license under this chapter. The bill also requires that a rule be in place no later than January 1, 2006. In addition, House Bill 2680 (HB 2680) (2005) amended Texas Occupations Code §112.051 and requires regulatory agencies of healthcare practitioners (including the Board) to "adopt rules providing for reduced fees and continuing education requirements for retired health care practitioners whose only practice is voluntary charity care."

Forensic Evidence Collection

DNA and other evidence collected for sexual assault cases is typically gathered during a medical forensic examination of the victim. Specific post-licensure continuing education and training are necessary in order to assure that the nurse involved in forensic evidence collection has the knowledge and skill competency necessary to properly collect, package, store, and transfer forensic evidence.

While forensic medical examination services in some metropolitan areas are excellent, access to trained professionals is restricted and unevenly distributed throughout the State. Many rural areas, mid-sized counties, and geographically large urban areas lack health professionals who are properly trained in providing evidentiary examinations, as well as collecting, preserving and documenting evidence.

The requirements in SB 39 are not intended to replace the extensive training necessary for a nurse to gain recognition as a SANE (Sexual Assault Nurse Examiner) nurse. Rather, the intent is to assure every sexual assault survivor has ready access to emergency healthcare professionals who have at least basic knowledge and skills in forensic evidence collection.

SB 39 amended the NPA by adding §301.306, Forensic Evidence Collection Component in Continuing Education. The bill additionally establishes that the Board must set rules to determine content and approval of CE offerings under this section. Approval will be the same as for all other CE for nurses. Stakeholder input from the Sexual Assault Nurse Examiners Division of the Texas Office of the Attorney General was sought for guidance on acceptable content as the amount of information that can be covered in a 2-hour CE offering will be extremely limited.

Although HB 546 and HB 677 also relate to sexual assault and forensic evidence collection/examinations, but do not impact the NPA; however, they will impact other laws that will be relevant to ER and SANE nurses. Summaries of these bills will be addressed in the Board's quarterly newsletter.

Continuing Education Requirements for Retired Nurses Providing Only Voluntary Charity Care

Texas Occupations Code §301.004 (Application of Chapter) excludes "gratuitous nursing care of the sick that is provided by a friend"; however, it does not address situations where a retired nurse may want to volunteer to perform nursing services on a broader basis, such as assisting volunteer organizations. House Bill 2680, however, allows retired nurses to provide voluntary charity care (defined in proposed §217.9) and requires the Board to require a lesser number of continuing education hours and lower fees for a retired nurse who only does voluntary charity care. The Board will require ten CE hours per biennium and a $10 fee (§223.1).

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of implementing the proposed amendments.

Ms. Thomas has determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be that the rules will implement the statutes passed by the Legislature in the 79th Regular Session (2005). There will be no effect on small businesses. There is no anticipated additional cost to affected individuals as a result of these proposed amendments.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701.

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The proposed amendments will implement Texas Occupations Code §301.306 and §112.051.

§216.3. Requirements.

Twenty contact hours of continuing education within the two years immediately preceding renewal of registration are required.

(1) - (5) (No change.)

(6) Forensic Evidence Collection.

(A) Each nurse licensed in Texas and employed in an emergency room setting on or after September 1, 2006 shall complete a minimum of two hours of continuing education relating to forensic evidence collection, as required by Texas Occupations Code §301.306 and this rule by:

(i) September 1, 2008 for nurses to whom this requirement applies who are employed in an ER setting on or before September 1, 2006, or

(ii) within two years of the initial date of employment in an emergency room setting. This requirement may be met through completion of either Type I or Type II approved continuing education activities, as set forth in §216.4 of this title.

(B) This requirement shall apply to nurses who work in an emergency room (ER) setting that is:

(i) the nurse's home unit;

(ii) an ER unit to which the nurse "floats" or schedules shifts; or

(iii) a nurse employed under contractual, temporary, per diem, agency, traveling, or other employment relationship whose duties include working in an ER.

(C) A licensed nurse in Texas who would otherwise be exempt from CE requirements during the nurse's initial licensure or first renewal periods under §216.8(b) or (c) of this title shall comply with the requirements of this section. This is a one-time requirement for each nurse employed in an emergency room setting. In compliance with §216.7(b) of this title, each licensee is responsible for maintaining records of CE attendance. Validation of course completion in Forensic Evidence Collection should be retained by the nurse indefinitely, even if a nurse changes employment.

(D) The minimum 2 hours of continuing education requirement shall include information relevant to forensic evidence collection and age or population-specific nursing interventions that may be required by other laws and/or are necessary in order to assure evidence collection that meets requirements under Texas Government Code §420.031 regarding use of a service-approved evidence collection kit and protocol. Content may also include but is not limited to documentation, history-taking skills, use of sexual assault kit, survivor symptoms, and emotional and psychological support interventions for victims.

(E) The required hours are included in the requirements of paragraphs (1) - (3) of this section relating to continuing education requirements for nurses.

(7) Continuing Education Requirements for Retired Nurses Providing Only Voluntary Charity Care.

(A) In compliance with Texas Occupations Code §112.051, the Board shall adopt rules providing for reduced fees and continuing education requirements for retired health care practitioners whose only practice is voluntary charity care.

(B) A nurse who is 65 years old or older and who holds or is seeking to hold a valid volunteer retired (VR) nurse authorization:

(i) Must have completed at least 10 hours of either Type 1 or Type 2 continuing education as defined in this chapter during the previous biennium, unless the nurse also holds valid recognition as an advanced practice nurse or is a Volunteer Retired Registered Nurse (VR-RN) with advanced practice authorization in a given role and specialty in the State of Texas.

(ii) Must have completed at least 20 hours of either Type I or Type 2 CE as defined in this chapter if authorized by the Board in a specific advanced practice role and specialty. The 20 hours of CE must meet the same criteria as APN CE defined under paragraph (3) of this section. An APN authorized as a VR-RN with APN authorization may NOT hold prescriptive authority. This does not preclude a registered nurse from placing his/her APN authorization on inactive status and applying for authorization only as a VR-RN.

(iii) Is exempt from fulfilling targeted CE requirements except as required for volunteer retired advanced practice nurses.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 26, 2005.

TRD-200504847
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 305-6823

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CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §217.9, §217.18

The Board of Nurse Examiners proposes amendments to 22 TAC §217.9 and §217.18, concerning Licensure, Peer Assistance and Practice. House Bill 2680 (HB 2680) (2005) amended Texas Occupations Code §112.051, which requires regulatory agencies of healthcare practitioners (including the Board) to "adopt rules providing for reduced fees and continuing education requirements for retired health care practitioners whose only practice is voluntary charity care." In addition, House Bill 1718 (HB 1718) amended the Nursing Practice Act by repealing §§301.1525 - 301.1527 and adding §301.353. The proposed amendments to §217.18 implement HB 1718 and address the statutory requirements for a nurse whose functions include acting as a first assistant in surgery.

Retired Nurses Providing Only Voluntary Charity Care

Texas Occupations Code §301.004 (Application of Chapter) excludes "gratuitous nursing care of the sick that is provided by a friend"; however, it does not address situations where a retired nurse may want to volunteer to perform nursing services on a broader basis, such as assisting volunteer organizations. The NPA statute and Board Rule for inactive and retired nurses in Texas are as follows:

§301.261. Inactive Status.

(c) A person whose license is on inactive status may not perform any professional nursing or vocational nursing service or work.

(e) The Board by rule shall permit a person whose license is on inactive status and who is 65 years or older to use, as applicable, the title "Registered Nurse Retired," "RN Retired," "Vocational Nurse Retired," "LVN Retired," or "VN Retired."

§217.9. Inactive Status.

(b) A nurse on inactive status who is 65 years old or older, and requests to use the title "Licensed Vocational Nurse, Retired," "LVN, Retired," "Vocational Nurse, Retired," "VN Retired", Registered Nurse, Retired," or RN Retired," must submit the following:

(1) a written request to use the title, and

(2) the required, non-refundable fee.

(c) An individual who is permitted under section 301.261 to use the title..."retired"...may not use that title to practice as a nurse for compensation.

House Bill 2680 does not include an age requirement for "volunteer retired" health practitioners; however, since the age requirement {65 years or older} for retired nurses is already part of existing statute and rule, the same is recommended for consistency in the BNE rule language. This means that a nurse younger than 65 years whose license is "inactive" may not request "volunteer retired" nurse authorization status. This preclusion would be in line with the statute in Texas Occupations Code §112.051, as the language only addresses *retired* practitioners, not *inactive* practitioners.

Nurses Who First Assist in Surgery.

House Bill 803 (HB 803) passed in the 77th Legislative Session (2001), amended the Nursing Practice Act by adding §301.1525. The section defined a "nurse first assistant" as a registered nurse who is certified in perioperative nursing by an organization recognized by the Board and has completed a nurse first assistant program approved by an organization recognized by the Board. The new section also granted the Board authority to develop rules relating to RNFAs. The amendment to the Nursing Practice Act was consistent with the Board's position on this issue that was adopted in January 1995. This amendment to the Nursing Practice Act and the subsequent adoption of §217.18 resulted in a large number of inquiries and concerns submitted to staff from nurses and their employers who did not meet the criteria to first assist.

In the 78th Regular Legislative Session (2003), HB 2131 further amended the Nursing Practice Act by adding §301.1526 and §301.1527. The new sections provided an alternative for RNs who did not meet the criteria for RNFAs to "directly assist" in surgery. The new sections also provided a definition for "directly assisting" by listing functions that may/may not be performed by RNs in this role. The sections of the Nursing Practice Act related to "directly assisting" created additional barriers for RNs who wished to assist in surgery and placed the Board and its staff in the position of having to determine whether an activity was exclusively within the realm of first assisting or whether the activity could be performed by RNs who were either "directly assisting" or assisting in the scrub role. Employers were hesitant to allow RNs to function in the scrub role because they feared nurses would be sanctioned for performing activities such as holding retractors. Proposed revisions to §217.18 to reflect changes made by HB 2131 were withdrawn due to stakeholders' concerns regarding the experiential requirements for nurses who "directly assist."

It should also be noted that nothing in §§301.1525 - 301.1527 addressed LVNs functioning in the first assistant role. Therefore, when the BVNE and BNE became a single board of nursing in February 2004, there were no provisions for those LVNs who had been performing first assistant activities to continue to do so. Issues that RNs had been experiencing since the passage of HB 803 in 2001 became issues for LVNs as they were now subject to regulation under the Nursing Practice Act.

Prior to the 79th Regular Legislative Session (2005), representatives of the stakeholder organizations met with board staff to discuss their intent to seek legislation that would amend the first assistant and direct assistant sections of the Nursing Practice Act. Regulatory issues faced as a result of previous legislation were discussed at those meetings.

House Bill 1718 amended the Nursing Practice Act by repealing §§301.1525 - 301.1527 and adding §301.353. (Please note that there are currently two sections of the Nursing Practice Act that bear section number 301.353 one section added by SB 1000 and the other by HB 1718). First assistant qualifications were moved to this new section. In addition, there is now a provision for currently authorized advanced practice nurses who are not certified in perioperative nursing to first assist if they complete RNFA educational programs. The section also added provisions for nurses at any level of licensure to assist under the direct supervision of and in the physical presence of a physician, dentist or podiatrist.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of implementing the proposed amendments.

Ms. Thomas has determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be that the amendments to §217.18 will parallel the language that amended the Nursing Practice Act as stated in HB 2680 and HB 1718. Many of those special interest groups who previously expressed concern (such as advanced practice nurses and LVNs) now have the opportunity to either first assist or perform certain surgical assistant activities under supervision. Nurses and their employers will no longer need to attempt to differentiate activities that are exclusive to first assisting from those that are not. There will be no effect on small businesses. There is no anticipated additional cost to affected individuals as a result of these proposed amendments.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701.

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

The proposed amendments will implement Texas Occupations Code §301.353 and §112.051.

§217.9. Inactive Status.

(a) - (c) (No change.)

(d) Volunteer Retired Nurse Authorization. In compliance with Texas Occupations Code §112.051, the Board shall adopt rules providing for reduced fees and continuing education requirements for retired health care practitioners whose only practice is voluntary charity care. The Board shall also define voluntary charity care.

(1) A licensed nurse whose license is designated as "retired" status, or who chooses to place his/her nursing license on "retired" status, as defined in Texas Occupation Code §301.261(e), or who seeks to renew authorization as a Volunteer Retired Nurse must meet the following criteria to qualify for Volunteer Retired (VR) Nurse Authorization:

(A) Must have no current action or pending investigation on his/her nursing license or VR authorization. This qualifier applies to all licenses/authorizations or APN authorizations held;

(B) Must claim Texas as the nurse's Primary State of Residence in accordance with Texas Occupations Code Chapter 304, Nurse Licensure Compact, and Chapter 220 of this title.

(C) If applying for VR-VN or VR-RN, must have completed at least 10 hours of either Type 1 or Type 2 continuing education as defined in Chapter 216 of this title (relating to Continuing Education) during the previous biennium. If applying for VR-RN with APN authorization, the nurse must meet CE requirements as described under §216.3(7) of this title.

(D) If a nurse's license is delinquent, suspended, surrendered, or revoked, the nurse is not eligible for a volunteer retired nurse license until the resolution of any outstanding issues in relation to the nurse's license. Likewise a nurse whose license is "inactive" must also be eligible for "retired" authorization status under Texas Occupations Code §301.261 in order to apply for "volunteer retired" nurse authorization.

(2) Application. An applicant for a Volunteer Retired Nurse Authorization must complete and submit to the Board an application for Volunteer Retired Nurse Authorization as a vocational nurse, registered nurse, or registered nurse with advanced practice authorization in a given role and specialty.

(3) Scope of Authorization for LVN or RN. A nurse holding a Volunteer Retired Nurse Authorization may only practice nursing at the level for which he/she formerly held an active/unencumbered license to practice nursing. To qualify as volunteer practice, such practice must be without compensation or expectation of compensation as a direct service volunteer of a charitable organization. When engaging in practice as a volunteer retired nurse, the nurse must comply with the NPA and rules in their entirety.

(4) Scope of Authorization for APN. A VR-RN who has authorization in an advanced practice role and specialty at the time of application for VR-RN authorization must continue to practice in collaboration/supervision with a physician qualified in the advanced practice nurse's role and specialty, as well as all other laws applicable to the APN's practice setting, both within the NPA and rules, as well as other laws.

(5) Charitable Organization. A charitable organization is defined in §84.003 of the Texas Civil Practice and Remedies Code and includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization promoting the common good and general welfare for the people in a community, including these types of organizations with a §501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(6) Renewal. A Volunteer Retired Nurse Authorization expires on the same date as a nurse's regular license previously expired. Each volunteer retired licensee seeking to renew his/her authorization status shall meet the continuing education requirements as set forth in this section for the applicable renewal period.

(7) Penalty. The holder of a Volunteer Retired Nurse Authorization shall not receive compensation (monetary or non-monetary benefits) for the practice of nursing. To do so would constitute the practice of vocational, professional, or advanced practice nursing (as applicable) without a license and will subject the volunteer retired nurse to the penalties imposed for this violation.

(8) Titles. A nurse holding a valid volunteer retired nurse authorization may hold him/herself out as and may use appropriate titles to reflect the individual nurse's volunteer retired nurse authorization (i.e., VR-VN; VR-RN; VR-RN, FNP, etc.). Titles representing to the public that a nurse holds a Volunteer Retired Nurse Authorization are protected in the same manner as titles listed in Texas Occupations Code §301.351 and §217.10 of this title.

(9) Authorization Verification. Authorization verification may be accomplished by accessing the BNE web page at http://www.bne.state.tx.us.

(e) [~~(d)~~] A nurse who has not practiced nursing and whose license has been in an inactive status for less than four years may reactivate the license by completing the reactivation application form, paying the required reactivation fee and the current licensure fee which are non-refundable, and submitting verification of completion of 20 contact hours of continuing education in compliance with Chapter 216 of this title (relating to Continuing Education).

(f) [~~(e)~~] A nurse who has not practiced professional nursing in Texas and whose license has been in an inactive status for more than four years must submit:

(1) a reactivation application form;

(2) verification of completion of a refresher course, extensive orientation to the practice of nursing or program of study which meets the board's requirements and was completed within the last year;

(3) evidence of completion of 20 contact hours of CE in compliance with Chapter 216 (relating to Continuing Education);

(4) the required reactivation fee plus the current licensure fee, which are non-refundable.

(g) [~~(f)~~] A nurse who has not practiced nursing in Texas or another jurisdiction within the last four years and has not participated in a refresher course within the last year must submit:

(1) an application for a six month temporary permit to be used only for completion of a refresher course, extensive orientation to the practice of nursing or program of study which meets the board's requirements; and

(2) the required six-month temporary permit fee which is non-refundable.

(h) [~~(g)~~] A nurse completing refresher course requirements in another jurisdiction is exempt from requirements of subsection (g)[~~(f)~~](1) and (2) of this section.

(i) [~~(h)~~] Upon completion of the refresher course, extensive orientation to the practice of nursing, or program of study which meets the board's requirements, the nurse shall then comply with subsection (f) [~~(e)~~] of this section.

§217.18. Assisting at Surgery [~~Registered Nurse First Assistants~~].

(a) Nurse First Assistants. [~~Qualifications for registered nurse first assistants (RNFAs):~~]

(1) A registered nurse who wishes to function as a first assistant (RNFA) in surgery shall meet [~~submit an application and all applicable fees to the Board and shall submit evidence including, but not limited to,~~] the following requirements:

(A) Current licensure as a registered nurse in the State of Texas or [~~reside in any party state and hold~~] a current, valid registered nurse license with a multi-state privilege in a party [~~that~~] state;

[~~(B) Current national certification (CNOR) in perioperative nursing; and~~]

(B) [~~(C)~~] Completion of a nurse first assistant educational program approved or recognized by an organization recognized by the Board; and [~~or~~]

(C) Is either:

(i) currently certified in perioperative nursing by an organization recognized by the board (CNOR); or

(ii) currently recognized by the board as an advanced practice nurse and qualified by education, training, or experience to perform the tasks involved in perioperative nursing.

[(D) Current certification as a registered nurse first assistant (CRNFA) by a national certifying body recognized by the Board.]

[(2) After review by the Board, notification of registration shall be mailed to the RNFA informing him/her that the registration process has been completed.]

(2) [(3)] The registered nurse whose functions include acting as a first assistant in surgery shall know and conform to the Texas Nursing Practice Act; current Board rules, regulations, and standards of [professional] nursing practice; and all federal, state and local laws, rules, and regulations affecting the RNFA specialty area. When collaborating with other health care providers, the RNFA shall be accountable for knowledge of the statutes and rules relating to RNFAs and function within the scope of the registered nurse. Advanced practice nurses functioning as first assistants shall function within the scope of the advanced role and specialty for which they hold authorization to practice from the board.

(3) [(4)] A registered nurse (including an advanced practice nurse) functioning as a first assistant in surgery shall comply with the standards set forth by the AORN.

(b) Assisting at Surgery by Other Nurses. [A registered nurse not qualifying under subsection (a) of this section may first assist until January 1, 2005 if he/she:]

(1) A nurse who is not a nurse first assistant as defined in subsection (a) of this section may assist a physician, podiatrist, or dentist in the performance of surgery if the nurse:

(A) [(1)] Has current licensure as a [registered] nurse in the State of Texas or [resides in any party state and holds] a current, valid nursing [registered nurse] license with a multi-state privilege in a party [that] state;

(B) Assists under the direct personal supervision and in the physical presence of the physician, podiatrist, or dentist;

(C) Is in the same sterile field as the physician, podiatrist, or dentist;

(D) Is employed by:

(i) the physician, podiatrist, or dentist;

(ii) a group to which the physician, podiatrist, or dentist belongs; or

(iii) a hospital licensed or owned by the state; and

(E) Is qualified by education, training, or experience to perform the tasks assigned to the nurse.

(2) A nurse who is not a nurse first assistant as defined in subsection (a) of this section shall not use:

(A) The title "nurse first assistant" or "registered nurse first assistant,"

(B) The abbreviation "R.N.F.A.," or

(C) Any other title or abbreviation that implies to the public that the person is qualified as a nurse first assistant under subsection (a) of this section.

[(2) Was actively engaged in first assisting as of March 1, 2002;]

[(3) Does not use any titles to imply that the person is a nurse first assistant or otherwise hold him/herself out as a nurse first assistant;]

[(4) Has operating room experience that meets the following criteria:]

[(A) CNOR eligible (meets qualifications to apply and sit for the national certification examination in perioperative nursing (CNOR) as defined by the Certification Board Perioperative Nursing) and]

[(B) One year or 500 hours of experience first assisting as of March 1, 2002; and]

[(5) Complies with BNE Standards of Professional Nursing Practice Rule 217.11(12) requiring RNs to accept only assignments that take into consideration patient safety and that are commensurate with the RN's educational preparation, experience, knowledge and physical and emotional ability;]

[(c) Effective January 1, 2005, the exceptions outlined in subsection (b) of this section no longer apply, and any registered nurse first assisting must meet the requirements outlined in subsection (a).]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 26, 2005.

TRD-200504848
Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 305-6823

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CHAPTER 221. ADVANCED PRACTICE NURSES

22 TAC §221.3, §221.12

The Board of Nurse Examiners proposes amendments to 22 TAC §221.3 and §221.12, concerning Advanced Practice Nurses. Section 221.3 addresses the educational requirements for authorization to practice as an advanced practice nurse in the State of Texas. Section 221.3 and §221.12 have not been amended since their adoption in February 2001. Section 221.12, relating to Scope of Practice for advanced practice nurses, states that the advanced practice nurse's scope of practice is based upon educational preparation, continued advanced practice experience and the accepted scope of professional practice of the particular specialty area. The rule further indicates that the scope of practice of particular specialty areas is defined by national professional specialty organizations or advanced practice nursing organizations recognized by the Board.

Over the last four years, the Board has seen several requests for waiver of various requirements outlined in §221.3. The proposed amendments to this section address many of the issues raised by past petitioners in an effort to provide greater clarity and are

consistent with the decisions made by the Board related to those petitions.

Prior to presenting the proposed amendments to the Board, the proposed revisions were shared with the members of the Advanced Practice Nursing Advisory Committee (APNAC). It should be noted that two of the individuals on that committee are directors of advanced educational programs that hold full approval from the Board of Nurse Examiners. The APNAC members provided input that were incorporated into the proposed amendments. In addition, the Board has long recognized a baccalaureate degree in nurse anesthesia as the equivalent of a post-basic certificate program in nurse anesthesia. The addition of the statement related to RN to BSN programs is not intended to be applied to graduates of these programs.

In April 2003, the Board charged the APNAC with reviewing scope of practice in §221.12 and the information relevant to each of the recognized specialty areas and providing a recommendation to the Board regarding recognition of specific scope of practice statements. The committee considered this charge at the same time it developed the proposed guidelines for determining scope of practice.

The committee members discussed the pros and cons of recognizing specific scope of practice statements. The APNAC recognized that scope of practice statements developed by professional specialty organizations and advanced practice nursing organizations can and do change. The committee questioned whether the Board would then be required to review and vote to recognize each statement each time it was revised. Because of differences inherent in each advanced practice role and specialty, it would be difficult to develop criteria by which such documents could be consistently reviewed. They also expressed concern that recognition of specific statements could be limiting both for the Board as well as for advanced practice nurses. Therefore, the committee members elected to recommend that the Board not recognize specific scope of practice statements and revise §221.12(1) accordingly.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of implementing the proposed amendments.

Ms. Thomas has determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be that the rules will provide greater clarity for those advanced practice nurses seeking authorization to practice in the State of Texas. Advanced practice nurses prepared in out of state programs as well as their program directors will have clearer information regarding how the Board interprets these requirements. In addition, the proposed amendments eliminate the requirement that the Board recognize specific scope of practice statements. The Board does not recognize specific scope of practice/standard of care documents for other levels of licensure, and this amendment is consistent with that practice. Should new statements be developed or existing statements revised, interested parties could be referred to those documents without having to gain approval directly from the Board. The proposed rule amendment will provide advanced practice nurses as well as other entities with more resources when considering scope of practice issues. There will be no effect on small businesses. There is no anticipated additional cost to affected individuals as a result of these proposed amendments.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701.

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.151 and §301.152 which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

These proposed amendments will implement Texas Occupations Code §301.152.

§221.3. Education.

(a) In order to be eligible to apply for authorization as an advanced practice nurse, the registered nurse must have completed post-basic [~~an~~] advanced educational program of study appropriate for practice in an advanced nursing specialty and role recognized by the Board. RN to BSN programs shall not be considered post-basic programs for the purpose of this rule. [~~board.~~]

(b) Individuals prepared in more than one advanced practice role and/or specialty (including blended role or dual specialty programs) shall be considered to have completed separate advanced educational programs of study for each role and/or specialty area.

(c) [~~(b)~~] Applicants for authorization to practice in an advanced role and specialty recognized by the Board [~~as advanced practice nurses~~] must submit verification of completion of all requirements of an advanced educational program that meets the following criteria:

(1) Advanced educational programs in the State of Texas shall be approved [~~accredited~~] by the Board [~~board~~] or accredited by a national accrediting body recognized by the Board [~~board~~].

(2) Programs in states other than Texas shall be accredited by a national accrediting body recognized by the board or by the appropriate licensing body in that state. A state licensing body's accreditation process must meet or exceed the requirements of accrediting bodies specified in board policy.

(3) Programs of study shall be at least one academic year in length and shall [~~may~~] include a formal preceptorship.

(4) Beginning January 1, 2003, the program of study shall be at the graduate [~~master's~~] degree level.

(5) Applicants prepared in more than one advanced practice role and/or specialty shall demonstrate that all curricular requirements set forth in this subsection have been met for each role and/or specialty.

(d) [~~(c)~~] Applicants for authorization as clinical nurse specialists must submit verification of the following requirements in addition to those specified in subsection (b) of this section:

(1) completion of a master's degree in the discipline of nursing, and

(2) completion of a minimum of nine semester credit hours or the equivalent in a specific clinical major. Clinical major courses must include didactic content and offer clinical experiences in a specific clinical specialty/practice area.

(e) [~~(d)~~] Those applicants who completed nurse practitioner or clinical nurse specialist programs on or after January 1, 1998 must demonstrate evidence of completion of the following curricular requirements:

(1) separate, dedicated, courses in pharmacotherapeutics, advanced assessment and pathophysiology and/or psychopathology

(psychopathology accepted for advanced practice nurses prepared in the psychiatric/mental health specialty only). These must be graduate [~~advanced~~] level academic courses [~~with a minimum of 45 clock hours per course~~];

(2) evidence of theoretical and clinical role preparation;

(3) evidence of clinical major courses in the specialty area; and

(4) evidence of a practicum/preceptorship/internship to integrate clinical experiences as reflected in essential content and the clinical major courses.

(5) In this subsection, the following terms have the following definitions:

(A) Advanced Assessment Course means a course that offers content supported by related clinical experience such that students gain the knowledge and skills needed to perform comprehensive assessments to acquire data, make diagnoses of health status and formulate effective clinical management plans.

(B) Pharmacotherapeutics means a course that offers content in pharmacokinetics and pharmacodynamics, pharmacology of current/commonly used medications, and the application of drug therapy to the treatment of disease and/or the promotion of health.

(C) Pathophysiology means a course that offers content that provides a comprehensive, system-focused pathology course that provides students with the knowledge and skills to analyze the relationship between normal physiology and pathological phenomena produced by altered states across the lifespan.

(D) [~~(C)~~] Role preparation means formal didactic and clinical experiences/content that prepare nurses to function in an advanced nursing role.

(E) [~~(D)~~] Clinical major courses means courses that include didactic content and offer clinical experiences in a specific clinical specialty/practice area.

(F) [~~(E)~~] Clinical specialty area means specialty area of clinical practice based upon formal didactic preparation and clinical experiences.

(G) [~~(F)~~] Essential content means didactic and clinical content essential for the educational preparation of individuals to function within the scope of advanced nursing practice. The essential content includes but is not limited to: advanced assessment, pharmacotherapeutics, role preparation, nursing specialty practice theory, physiology/pathology, diagnosis and clinical management of health status, and research.

(H) [~~(G)~~] Practicum/Preceptorship/Internship means a designated portion of a formal educational program that is offered in a health care setting and affords students the opportunity to integrate theory and role in both the clinical specialty/practice area and advanced nursing practice through direct patient care/client management. Practicums/Preceptorships/Internships are planned and monitored by either a designated faculty member or qualified preceptor.

(f) [~~(e)~~] Those applicants who complete nurse practitioner or clinical nurse specialist programs on or after January 1, 2003 must demonstrate evidence of completion of a minimum of 500 separate, non-duplicated clinical hours for each advanced role and specialty within the advanced educational program.

§221.12. Scope of Practice.

The advanced practice nurse provides a broad range of health services, the scope of which shall be based upon educational preparation, continued advanced practice experience and the accepted scope of professional practice of the particular specialty area. Advanced practice nurses practice in a variety of settings and, according to their practice specialty and role, they provide a broad range of health care services to a variety of patient populations.

(1) The scope of practice of particular specialty areas shall be defined by national professional specialty organizations or advanced practice nursing organizations [~~recognized by the Board~~]. The advanced practice nurse may perform only those functions that [~~which~~] are within that scope of practice and [~~which~~] are consistent with the Nursing Practice Act, Board rules, and other laws and regulations of the State of Texas.

(2) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 26, 2005.

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Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 305-6823

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CHAPTER 223. FEES

22 TAC §223.1, §223.2

The Board of Nurse Examiners proposes amendments to 22 Texas Administrative Code §223.1, concerning Fees and §223.2, concerning Charges for Public Records. Section 223.1(a)(17) is being amended to implement House Bill 2680 (79th Regular Session, 2005) which requires regulatory agencies of healthcare practitioners (including the Board) "adopt rules providing for reduced fees and continuing education requirements for retired health care practitioners whose only practice is voluntary charity care." Section 223.2 is being proposed for amendment due to the change in law by Senate Bill 727. The authority for setting the fees for public records was transferred from the Texas Building and Procurement Commission to the Attorney General's Office.

Katherine Thomas, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of implementing the proposed amendments.

Ms. Thomas has determined that for each year of the first five years the proposed amendments are in effect, the public benefit will be that the rules will incorporate the new statutory changes. There will be no effect on small businesses. There is no anticipated additional cost to affected individuals as a result of these proposed amendments.

Written comments on the proposal may be submitted to Katherine A. Thomas, MN, RN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, Suite 3-460, Austin, Texas 78701.

The amendments are proposed pursuant to the authority of Texas Occupations Code §301.151 and §301.152, which authorizes the Board of Nurse Examiners to adopt, enforce, and

repeal rules consistent with its legislative authority under the Nursing Practice Act.

The proposed amendments will implement Texas Occupations Code §112.051 and Texas Government Code §552.262 as passed in the 79th Regular Session of the Texas Legislature (2005).

§223.1. Fees.

(a) The Board of Nurse Examiners has established reasonable and necessary fees for the administration of its functions.

(1) - (16) (No change.)

(17) Licensed Vocational Nurse, Retired; [~~, or~~] Registered Nurse, Retired; Volunteer Retired Vocational Nurse (VR-VN); Volunteer Retired Registered Nurse (VR-RN); Volunteer Retired Registered Nurse (VR-RN) with qualifications in a given advanced practice nurse role and specialty (e.g., VR-RN, FNP): $10;

(18) - (23) (No change.)

(b) (No change.)

§223.2. Charges for Public Records.

In accordance with Texas Government Code §552.262, [~~the Act, 76th Legislature, Regular Session (1999), ch. 1319, §16,~~] the Board of Nurse Examiners will make copies of public records and charge the fees established by the Attorney General's Office. [~~Texas Building and Procurement Commission.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 25, 2005.

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Katherine Thomas
Executive Director
Board of Nurse Examiners
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 305-6823

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 19. AGENT'S LICENSING

SUBCHAPTER K. CONTINUING EDUCATION AND ADJUSTER PRELICENSING EDUCATION PROGRAMS

28 TAC §§19.1011, 19.1020, 19.1021

The Texas Department of Insurance proposes amending §19.1011 and adding new §19.1020 concerning continuing education credit for licensees who are members of state and national insurance associations, and adding new §19.1021 relating to national flood insurance education training. These amendments and new sections are necessary to implement Senate Bill (SB) 265 enacted by the 79th Legislature, Regular Session; to apply the SB 265 continuing education credits to life and health insurance counselors, insurance adjusters and public insurance adjusters; and to establish certified course requirements for flood insurance training under the federal Flood Insurance Reform Act of 2004.

Under SB 265, the Commissioner is authorized by rule to authorize the department to grant not more than four hours of continuing education credit to an agent who is an active member of a state or national insurance association. As required by SB 265, this proposal specifies acceptable state and national insurance associations, the number of hours of credit that agents who are members may obtain for certain activities, and the procedure for agent members to claim credit for completing these activities. This proposal also authorizes continuing education credit for holders of national designation certifications. Under this proposal the same continuing education credit is also authorized for life and health insurance counselors., insurance adjusters, and public insurance adjusters pursuant to authority granted to the Commissioner in the applicable statutes related to continuing education for those license types.

This proposal also establishes the criteria for certified courses that providers may develop to comply with the minimum training and education requirements established by the Federal Emergency Management Agency (FEMA) to implement the Flood Insurance Reform Act of 2004 for insurance agents who sell Standard Flood Insurance Policies issued through the National Flood Insurance Program.

Proposed amendments to §19.1011 specify the information that a person is required to submit to claim credit for state or national insurance association continuing education hours and the procedure for claiming those continuing education credit hours. Proposed §19.1020 describes the associations that qualify as a state or national insurance associations for the purposes of continuing education credit under SB 265, the activities for which hours may be claimed, and the maximum number of hours that may be claimed. Proposed §19.1021 establishes the criteria for certified courses that providers may develop for persons who intend to write or insurance agents who currently write flood insurance to comply with FEMA's minimum training and education requirements implementing the Flood Insurance Reform Act of 2004.

Matt Ray, Deputy Commissioner, Licensing Division, has determined that for each year of the first five years the proposal will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. Ray has determined that for each year of the first five years the proposal is in effect, the anticipated public benefits will be that the public is assured that agents and other licensees who are members of state and national insurance associations will obtain quality continuing education and that the department can specifically certify continuing education courses meeting federal requirements for persons writing flood insurance in Texas. The probable economic cost to persons required to comply with the proposed sections will result from the enactment of SB 265 and the federal Flood Insurance Reform Act of 2004 and not as a result of the adoption, enforcement, or administration of the proposed sections. As the proposed sections do not result in any economic cost, there is no difference in the cost of compliance between a large and small business as a result of the proposed sections. In addition, the proposed sections do not affect the cost of labor per hour; thus, there is no disproportionate economic

impact on small or micro businesses. Even if the proposed sections did result in economic cost, it is neither legal nor feasible to waive the provisions of the proposed subchapter for small or micro businesses as continuing education requirements apply to individual licensees.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 12, 2005 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Matt Ray, Deputy Commissioner, Licensing Division, Mail Code 107-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The department will consider the adoption of the proposed amendments and new sections in a public hearing under Docket No.2628 scheduled for December 1, 2005 at 9:30 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

The amendments and new sections are proposed under the Insurance Code Chapters 4001, 4004, 4052 and 4101. Section 4004.0535 authorizes the commissioner by rule to authorize the department to grant not more than four hours of continuing education credit to an agent who is an active member of a state or national insurance association, to adopt rules specifying the types of associations that constitute state or national insurance associations, the reasonable requirements for active participation in the association, and the manner of providing this information to the department. Section 4004.101 authorizes the commissioner to adopt rules establishing the criteria for continuing education courses for license holders. Section 4052.003 provides that, except as provided in Chapter 4052, Life and Health Insurance Counselors are licensed and regulated in the same manner as agents. Section 4101.059 authorizes the commissioner to certify a continuing education program for insurance adjusters. Section 4102.109 authorizes the commissioner to prescribe continuing education course requirements for public insurance adjusters. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following sections are affected by this proposal: Insurance Code §§4004.0535, 4004.101, 4052.003, 4101.059, and 4102.109 §19.1021 Insurance Code §4004.101, 4052.003, 4101.059, and 4102.109

§19.1011. Requirements for Successful Completion of Continuing Education Courses.

(a) - (e) (No change.)

(f) Notwithstanding subsections (a) - (e) of this section, licensees must claim continuing education under §19.1020 of this chapter (relating to State and National Association Credit) by sending to the department, or its designee, upon request, an affirmation acceptable to the department containing:

(1) the licensee's name, address, telephone number, and licensee's department license number;

(2) the name of the national designation or state or national insurance association providing educational materials or sponsoring educational presentations;

(3) the cumulative number of hours of credit claimed for reviewing the educational materials;

(4) the cumulative number of hours of credit claimed for attending the educational presentations;

(5) a statement that the licensee currently holds the national designation or is a member in good standing of the state or national insurance association; and

(6) A statement that the licensee completed at least the number of hours in these activities the licensee is claiming for continuing education credit.

(g) In addition to the affirmation provided under subsection (f) of this section, the department may request a licensee claiming hours under §19.1020 of this chapter to submit a sworn written affirmation to the department confirming under oath the information in subsection (f) of this section. Failure to submit a sworn affirmation will result in denial of the claimed hours and may result in disciplinary action under §19.1015 of this subchapter (relating to Failure to Comply) or the Insurance Code.

§19.1020. State and National Insurance Association Credit.

(a) For the purposes of this section the following definitions apply:

(1) Educational material--Printed or electronic materials with content intended to enhance the recipient's knowledge of insurance-related topics.

(2) Educational presentation--A live presentation allowing for questions or discussion given to a group of three or more licensees and that provides information intended to enhance the recipient's knowledge of insurance-related topics.

(3) State or national insurance association--A membership organization:

(A) organized as an association or corporation under state law;

(B) based on paid memberships renewable annually or biennially for an additional membership fee; and

(C) organized for the express purpose of promoting the interests of insurance licensees or a class of insurance licensees, including those classes based on license type or regional, gender, religious, or minority interests.

(b) Licensees who currently hold a national designation certification or are members in good standing of a state or national insurance association may receive up to four hours of self study continuing education credit per reporting period as follows:

(1) by accumulating up to two hours for reviewing educational materials provided by the national designation sponsor or state or national insurance association in which they hold a designation or are members; and

(2) by accumulating up to four hours for attending educational presentations sponsored by the national designation sponsor or state or national association in which they hold a designation or are members.

(c) A licensee may accumulate hours from different national designations or state or national insurance associations in which they hold a designation or membership to reach the four-hour limit, but regardless of the number of designations or association memberships or hours accumulated, the licensee may not claim more than four hours of credit under this section towards completing the licensee's continuing education requirement for any reporting period.

(d) Continuing education hours under this section shall apply only as self study credit and shall not count towards the licensee's

ethics, classroom, or classroom equivalent continuing education requirements.

(e) A licensee claiming hours under this section may claim the actual time, up to an accumulated total of four hours, that the licensee needed to review the educational material or the duration of the educational presentation.

§19.1021. Flood Insurance Education Course.

(a) Pursuant to §207 of the Flood Insurance Reform Act of 2004, the Federal Emergency Management Agency on September 1, 2005 published minimum training and education standards for persons that intend to write or currently write flood insurance (Federal Register, Vol. 70, No. 169, pp. 52117-52119). This section establishes these standards for a department-certified continuing education course.

(b) The course shall:

(1) be submitted for approval in compliance with §19.1007 of this subchapter (relating to Course Certification Submission Applications, Course Expirations, and Resubmissions);

(2) be at least three hours in length;

(3) and cover the topics listed in subsection (g) of this section.

(c) Providers may offer the course as a classroom, classroom equivalent, or self study course.

(d) The course may be taken after the department has issued a license or within 12 months preceding the license issue date.

(e) Licensees may count up to three hours towards completion of their initial continuing education requirement for successful completion of a certified flood insurance training course prior to issuance of their license. The licensee shall maintain proof of completion of the flood insurance training course prior to licensure for four years or through the second renewal of the license, whichever is longer. Upon request, the licensee shall provide the proof of course completion to the department or the department's designee.

(f) A provider-issued completion certificate in compliance with §19.1011(e) of this subchapter (relating to Requirements for Successful Completion of Continuing Education Courses) shall demonstrate proof of successful course completion.

(g) Course topics for the basic flood insurance course outline shall include:

(1) Section I - Introduction:

(A) National Flood Insurance Program (NFIP) Background;

(B) Community Participation;

(C) Emergency Program Defined;

(D) Regular Program Defined;

(E) Community Rating System;

(F) Eligible/Ineligible Buildings;

(G) Coastal Barrier Resources System and Other Protected Areas;

(H) Who Needs Flood Insurance?

(i) Mandatory Purchase of Flood Insurance in High Flood Risk Zones; and

(ii) Recommended in Moderate and Low Flood Risk Zones; and

(I) Why Flood Insurance is Better than Disaster Assistance.

(2) Section II - Flood Maps and Zone Determinations:

(A) Flood Hazard Boundary Map (FHBM);

(B) Flood Insurance Rate Map (FIRM):

(i) Pre-FIRM/Post-FIRM Defined; and

(ii) Special Flood Hazard Area Defined;

(C) Base Flood Elevation; and

(D) Zone Determination.

(3) Section III - Policies and Products Available:

(A) Dwelling Policy - Types of Buildings Covered;

(B) General Property Policy - Types of Buildings Covered;

(C) Residential Condominium Building Association (RCBAP) Policy - Types of Buildings Covered;

(D) Preferred Risk Policy - Types of Buildings Covered;

(E) Definitions:

(i) Flood;

(ii) Basement/Enclosure; and

(iii) Elevated Buildings;

(F) Damages Not Covered:

(i) Single Peril Policy; and

(ii) Mudslides vs. Mudflow;

(G) Property Covered:

(i) Basements;

(ii) Appurtenant Structure;

(iii) Loss Avoidance Measures;

(iv) Debris Removal; and

(v) Improvements and Betterments;

(H) Property and Expenses Not Covered:

(i) Decks;

(ii) Finished Items in Basements;

(iii) Property in Enclosures; and

(iv) Additional Living Expenses;

(I) Increased Cost of Compliance Coverage.

(4) Section IV - General Rules:

(A) Statutory Coverage Limits;

(B) Deductibles:

(i) Standard Deductibles; and

(ii) Apply Separately for Building and Contents;

(C) Property Value Determination for Selecting Coverage Amount;

(D) Loss Settlement:

(i) Actual Cash Value (ACV);

(ii) Replacement Cost Value (RCV); and

(iii) Co-insurance Penalty in RCBAP;

(E) Reduction and Reformation of Coverage;

(F) No Binders;

(G) One Building per Policy - No Blanket Coverage;

(H) Building and Contents Coverage Purchased Separately;

(I) Waiting Period/Effective Date of Policy;

(J) Policy Term; and

(K) Cancellations.

(5) Section V - Rating:

(A) Types of Buildings:

(i) Elevated Buildings; and

(ii) Buildings with Basements;

(B) When to Use an Elevation Certificate; and

(C) Grandfathering.

(6) Section VI - Claims Handling Process:

(A) Helping Your Client to File a Claim;

(B) Appeals Process; and

(C) Claims Handbook;

(7) Section VII - Requirements of the Flood Insurance Reform Act of 2004:

(A) Point of Sale and Renewal Responsibilities:

(i) Notification of Coverages Being Purchased;

(ii) Policy Exclusions that Apply;

(iii) Explanation Regarding How Losses Will be Adjusted (ACV vs. RCV);

(iv) Number and Dollar Amount of Claims for Property; and

(v) Acknowledgement Forms.

(8) Section VIII - Agent Resources:

(A) Write Your Own Company;

(B) FEMA Websites:

(i) http://www.fema.gov/nfip;

(ii) http://www.floodsmart.gov; and

(iii) http://training.nfipstat.com/; and

(C) Flood Insurance Manual.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 31, 2005.

TRD-200504958

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 463-6327

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER M. MANDATORY BENEFIT NOTICE REQUIREMENTS

28 TAC §§21.2101 - 21.2103, 21.2105, 21.2106

The Texas Department of Insurance proposes amendments to §§21.2101, 21.2102, 21.2103, 21.2105 and 21.2106 concerning mandatory notice of coverage of certain tests for the detection of human papillomavirus and cervical cancer. The 79th Texas Legislature enacted House Bill 1485 which added new Chapter 1370 to the Texas Insurance Code, mandating certain benefits related to the detection of human papillomavirus and cervical cancer. Chapter 1370 also contains mandatory notice requirements. The department proposes the amendments to the notice provisions in subchapter M to implement the statutory notice requirement in §1370.004. The proposal also updates Insurance Code references which were changed by the Texas Legislature's enactment of nonsubstantive code revision.

The proposed changes to §21.2101 expand the scope of the subchapter to include the notice requirements for coverage of benefits related to the detection of human papillomavirus and cervical cancer and set an effective date for the notice requirements. The proposed amendments to §21.2102 revise the definitions of "carrier" and "health benefit plan" to implement the provisions of HB 1485. The proposed amendments to §21.2103 require a carrier to issue the notice related to the detection of human papillomavirus and cervical cancer and revise subsection (d) to provide that if the mandated notice is issued prior to the effective date of these amendments, the notice is deemed compliant with the subchapter's notice requirements. The proposed amendments to §21.2105 recognize statutory changes permitting electronic distribution of notices and address requirements relating to delivery of the notice. The amendment to §21.2106 proposes a new form, number LHL391, which carriers may use to satisfy the notice requirement. Proposed amendments to the subchapter also include editorial or grammatical changes for clarity as well as updates to statutory references.

Ana Smith-Daley, Acting Associate Commissioner, Life, Health and Licensing Division, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Smith-Daley has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be that affected enrollees are notified on a timely basis of available benefits related to tests for the detection of human papillomavirus and cervical cancer. The costs to comply with the proposed amendments are the result of the 79th Legislature's (Regular Session) enactment of HB 1485, which created Chapter 1370, and are not a result of the adoption, enforcement, or administration of the proposed amendments. As such, the amendments, if adopted, will not have an adverse eco-

nomic effect on small and micro businesses. Additionally, Chapter 1370 specifies which plans are subject to the chapter and which plans are not subject to the chapter. The required notice is subject to the same cost-saving provisions, regardless of the size of the business or the plan, as the other notices this subchapter requires; §21.2103(c) permits a carrier required under this subchapter to provide other notices to combine the language of the required notices into one notice; §21.2105(a)(3) authorizes a carrier to deliver the required notice along with other plan documents rather than in a separate mailing. Even if the proposed sections did result in economic cost, it would be neither legal nor feasible for the department to waive the provisions of the proposed subchapter for small or micro businesses, as the notice requirement is statutory.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 12, 2005, to Gene Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted simultaneously to Bill Bingham, Deputy for Regulatory Matters, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The department will consider the adoption of the proposed amendments in a public hearing under Docket Number 2626, scheduled for 9:30 a.m., on December 1, 2005, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

The amendments are proposed under the Insurance Code §§1370.004, 1251.201, 1251.008, 1271.002, 843.151, and 36.001. Section 1370.004 requires that the written notice of coverage be provided in accordance with rules adopted by the commissioner. Section 1251.201 authorizes an insurer, by agreement between the insurer and the policyholder, to deliver certificates of insurance electronically. Section 1251.008 authorizes the commissioner to adopt rules necessary to administer Chapter 1251. Section 1271.002 authorizes an insurer, group hospital service corporation, or health maintenance organization, by agreement between it and the subscriber or other person entitled to receive the policy, contract, or evidence of coverage, to deliver evidences of coverage electronically. Section 843.151 authorizes the commissioner to adopt reasonable rules as necessary and proper to implement Chapter 1271. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Chapters 1251, 1271, and 1370.

§21.2101. Scope.

The purpose of this subchapter is:

(1) to require notice to enrollees in a health benefit plan of coverage and/or benefits for prostate cancer examinations; minimum inpatient stays for maternity and childbirth; minimum inpatient stays for mastectomy or lymph node dissection; reconstructive surgery after mastectomy; certain diagnostic screening tests for early detection of human papillomavirus and cervical cancer, and certain tests for the detection of colorectal cancer. With the exception of notice for reconstructive surgery after mastectomy, notice for certain diagnostic screening tests for early detection of human papillomavirus and cervical cancer, and notice for colorectal cancer detection, §§21.2102 - [~~through~~] 21.2106 of this subchapter apply to all carriers issuing, delivering, or renewing health benefit plans as defined in this subchapter as of January 1, 1998. For state notice requirements pertaining to reconstructive surgery after mastectomy, §§21.2102 - 21.2106 of this subchapter apply to all carriers issuing, delivering, or renewing health benefit plans as defined in this subchapter as of June 18, 1999. For notice requirements pertaining to tests for colorectal cancer detection, §§21.2102 - 21.2106 of this subchapter apply to all carriers issuing, delivering, or renewing health benefit plans as defined in this subchapter as of January 1, 2002. For notice requirements pertaining to diagnostic screening tests for early detection of human papillomavirus and cervical cancer, §§21.2102 - 21.2106 of this subchapter apply on or after January 1, 2006, to all carriers issuing, delivering, or renewing health benefit plans as defined in this subchapter.

(2) (No change.)

§21.2102. Definitions.

The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Carrier--An insurance company, a group hospital service corporation, a fraternal benefit society, a stipulated premium insurance company, a health maintenance organization, a multiple employer welfare arrangement that holds a certificate of authority under Insurance Code Chapter 846 [~~Article 3.95-2~~], or an approved nonprofit health corporation that holds a certificate of authority issued by the commissioner under Insurance Code Chapter 844 [~~Article 21.52F~~]. In addition, for the purposes of paragraph (3)(B) and (F) of this section, the term also includes a reciprocal exchange operating under Insurance Code Chapter 942; [~~19 and~~] for purposes of paragraph (3)(E) and (F) of this section, the term also includes a Lloyd´s plan operating under Insurance Code, Chapter 941; [~~18~~] and for purposes of paragraph (3)(E) of this section, the term also includes a risk pool created under Chapter 172, Local Government Code.

(2) Enrollee--A person enrolled in and entitled to coverage under a health benefit plan, including covered dependents.

(3) Health benefit plan--Subject to subparagraphs (A), (B), (C), (D), [~~and~~] (E), and (F) of this paragraph, a plan that is offered by a carrier and provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness including an individual, group, blanket or franchise insurance policy or insurance agreement, a group hospital service contract, an individual or group evidence of coverage, or any similar coverage document. The term does not include a plan that provides coverage only for accidental death or dismemberment, disability income, supplement to liability insurance, Medicare supplement, workers´ compensation, medical payment insurance issued as a part of a motor vehicle insurance policy or a long-term care policy.

(A) For the inpatient mastectomy coverage notice required by subsection (a)(1) of §21.2103 of this title (relating to Mandatory Benefit Notices), the definition of health benefit plan includes a plan that provides coverage only for a specific disease or condition for the treatment of breast cancer or for hospitalization. The term does not include a small employer health benefit plan issued under the Insurance Code Chapter 1501 [~~26~~], Subchapters A - H [~~A-G~~].

(B) For the reconstructive surgery after mastectomy notices required by subsection (a)(2) of §21.2103 of this title, the definition of health benefit plan does not include a plan that provides coverage for a specified disease or other limited benefit except for cancer, a plan that provides only credit insurance, a plan that provides coverage only for dental or vision care, or only for indemnity for hospital confinement.

(C) For the prostate cancer examination notice required by subsection (a)(3) of §21.2103 of this title, the definition of health benefit plan does not include a small employer health benefit plan written under the Insurance Code Chapter 1501 [~~26~~], Subchapters A - H [~~A-G~~], a plan that provides coverage only for a specified disease or other limited benefit, or only for indemnity for hospital confinement.

(D) For the inpatient maternity and childbirth coverage notice required by subsection [~~subsections~~] (a)(4) and (5) of §21.2103 of this title, the definition of health benefit plan does not include a plan that provides only credit insurance, a plan that provides coverage only for a specified disease or other limited benefit, only for dental or vision care, or only for indemnity for hospital confinement.

(E) For the detection of colorectal cancer screening coverage notice required by subsection (a)(6) of §21.2103 of this title, the definition of health benefit plan does not include a small employer health benefit plan written under the Insurance Code Chapter 1501 [~~26~~], Subchapters A - H [~~A-G~~], or a plan that provides coverage only for a specified disease or other limited benefit or only for indemnity for hospital confinement.

(F) For the detection of human papillomavirus and cervical cancer screening notice required by subsection (a)(7) of §21.2103 of this title, the definition of "health benefit plan" includes a small employer health benefit plan written under Insurance Code Chapter 1501, but does not include:

(i) a plan that provides coverage only for a specified disease or other limited benefit, other than a plan that provides benefits for cancer treatment or similar services;

(ii) a plan that provides coverage only for dental or vision care;

(iii) a plan that provides coverage only for indemnity or hospital confinement;

(iv) a credit insurance policy; or

(v) a limited benefit policy that does not provide coverage for physical examinations or wellness exams.

(4)- (5) (No change.)

§21.2103. Mandatory Benefit Notices.

(a) Prescribed mandatory benefit notices consist of the following:

(1) - (5) (No change.)

(6) For a health benefit plan that provides coverage and/or benefits for medical screening [~~medical~~] procedures, a carrier shall issue a notice which includes the language provided in Figure 6 of subsection (b) of §21.2106 of this title (relating to Forms, Form Number 1467 Colorectal Cancer Screening).

(7) For a health benefit plan that provides coverage and/or benefits for medical screening procedures, a carrier shall issue a notice which includes the language provided in Figure 7 of subsection (b) of §21.2106 of this title (relating to Forms, Form Number LHL391 Human Papillomavirus and Cervical Cancer Screening).

(b) - (c) (No change.)

(d) If, before the effective date of the amendments to this subchapter relating to a notice listed in paragraphs (1) - (3) of this subsection, [~~reconstructive surgery after mastectomy,~~] a carrier has provided to its enrollees notice(s) that contains the information concerning the required coverage or benefit [~~reconstructive surgery after mastectomy as required by §21.2103(a)(2) or (b) of this subchapter~~], such notice(s) shall be deemed to comply with the requirements of this subchapter as to those enrollees;

(1) reconstructive surgery after mastectomy as required by subsection (a)(2) or (b) of this section;

(2) tests for detection of colorectal cancer as required by subsection (a)(6) or (b) of this section; and

(3) tests for detection of human papillomavirus and cervical cancer as required by subsection (a)(7) or (b) of this section.

[~~(e) If, before the effective date of the amendments to this subchapter relating to tests for the detection of colorectal cancer, a carrier has provided to its enrollees a notice that contains the information concerning colorectal cancer screening tests as required by §21.2103(a)(6) or (b) of this subchapter, such notice shall be deemed to comply with the requirements of this subchapter as to those enrollees.~~]

§21.2105. Delivery of Mandatory Benefit Notices.

(a) The notices required by §21.2103(a)(1), (3) and (4) of this title (relating to Mandatory Benefit Notices) shall be issued to enrollees of a health benefit plan that is delivered, issued for delivery, or renewed on or after January 1, 1998, and shall be provided according to the following paragraphs:

(1) The notice shall be provided:

(A) within 60 days of March 29, 1998 to enrollees whose plans were renewed or issued between January 1, 1998 and March 29, 1998;

(B) within 60 days of enrollment to new enrollees, whether in a newly issued or newly delivered health benefit plan, or an existing plan which is renewed after March 29, 1998; or

(C) within 60 days of renewal date to existing enrollees of an existing plan which is renewed after March 29, 1998.

(2) Except as specified in paragraph (6) of this subsection, a carrier shall deliver the notices [~~shall be delivered~~] to enrollees through the U.S. Postal Service or, as permitted by state law, electronically.

(3) The notice may be delivered with other health benefit plan documents as long as the time frames set forth in paragraph (1) of this subsection are met. For example, the notice may be delivered with the policy, certificate, evidence of coverage, or enrollment/insurance card.

(4) If the notices are provided to the primary enrollee's last known address, the requirements of this section are satisfied with respect to all enrollees residing at that address.

(5) If a covered spouse or dependent's last known address is different than the primary enrollee, separate notices are required to be provided to the spouse or the dependent at the spouse's or dependent's last known address.

(6) For group health benefit plans, the notice may be provided to the group master contract holder for distribution to enrollees if the carrier has an agreement with the group master contract holder that the notice will be delivered in accordance with the timelines specified in paragraph (1) of this subsection; however, the carrier will be held responsible for ensuring that notice is provided to the enrollees.

(b) (No change.)

(c) A carrier shall issue the notices [~~The notice~~] required by §21.2103(a)(6) and (7) of this title [~~shall be issued~~] to enrollees of a health benefit plan, and subsections (a)(2) - (6) of this section shall also apply to the notices [~~notice~~], except for the timeline requirements of subsection (a)(1) of this section.

§21.2106. Forms.

(a) The forms identified in §21.2103 of this title (relating to Mandatory Benefit Notices) for notices of mandatory benefits are included in subsection (b) of this section in their entirety and have been filed with the Office of the Secretary of State. The forms can be obtained from the Texas Department of Insurance, Life/Health Division, MC 106-1A, P.O. Box 149104, Austin, Texas 78714-9104, or from the department's Web site, www.tdi.state.tx.us.

(b) The forms referenced in this chapter are as follow:

(1) - (6) (No change.)

(7) Figure Number 7: Form Number LHL391 Human Papillomavirus and Cervical Cancer Screening:
Figure: 28 TAC §21.2106(b)(7)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 31, 2005.

TRD-200504956
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 463-6327

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SUBCHAPTER EE. HIGH DEDUCTIBLE HEALTH PLANS

28 TAC §§21.3901 - 21.3905

The Texas Department of Insurance proposes new §§21.3901 - 21.3905 concerning high deductible health plans (HDHP). The 79th Texas Legislature's enactment of House Bill 1602 added new Chapter 1653 to the Texas Insurance Code, authorizing a carrier to apply deductible or copayment requirements to benefits, including state-mandated health benefits, to qualify a health benefit plan as an HDHP. The department proposes these new sections to implement HB 1602. To qualify as an HDHP, a health plan must meet standards specified in §223, Internal Revenue Code of 1986. Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, added §223 to the Internal Revenue Code to permit eligible individuals to establish health savings accounts (HSAs) for taxable years beginning after December 31, 2003. Among the requirements for an individual to qualify as an eligible individual under §223(c)(1) (and thus to be eligible to make tax-favored contributions to an HSA) is the requirement that the individual be covered under an HDHP, a health plan that satisfies certain requirements with respect to minimum deductibles and maximum out-of-pocket expenses. Generally, an HDHP may not provide benefits for any year until the deductible for that year is satisfied. Section 223(c)(2)(C), however, provides a safe harbor in that a plan does not lose its status as an HDHP by reason of failing to have a deductible for preventive care. An HDHP may therefore provide preventive care benefits without a deductible or with a deductible below the minimum annual deductible.

Texas law requires health plans to provide certain health care benefits or services without regard to a deductible, and health carriers should take care to follow federal guidance regarding whether such benefits or services fall within the §223(c)(2)(C) safe harbor for preventive care. For example, Texas Insurance Code §1367.053 requires coverage of certain childhood immunizations through age six without regard to a deductible, copayment, or coinsurance requirement. Similarly, Texas Insurance Code §1367.103 requires coverage of certain screening tests for hearing loss in children from birth through the date the child is 30 days old without regard to deductible or dollar limits. The federal government has identified both these types of benefits or services as within the preventive safe harbor (See IRS Notice 2004-23), so this rule would not authorize a carrier to apply a deductible or copayment requirement to these benefits or services.

The IRS has provided transitional relief for individuals in states where HDHPs are not available because state laws require health plans to provide certain benefits without regard to a deductible or below the minimum annual deductible of §223(c)(2)(A)(i). The transitional relief covers months before January 1, 2006. To achieve full implementation of HB 1602, this proposal contains a provision making the rule applicable to plans issued, amended to be effective, renewed, or issued for delivery on or after that date. This provision will ensure that HDHPs in Texas will be able to maintain federal tax qualification when the transitional relief expires on or after January 1, 2006. Carriers seeking to amend existing plans not scheduled for renewal before January 1, 2006 must comply with all state and federal laws before effecting amendment, including obtaining the consent of the policyholder where required. Proposed new §21.3901 expresses the purpose of the rule. Proposed new §21.2102 includes definitions of terms used in the subchapter. Proposed new §21.2103 provides that high deductible health plans are subject to state mandated health benefits, except as provided by proposed new §21.2104, which defines the scope of the exemption from state requirements as necessary to qualify a health benefit plan as a high deductible health plan. Proposed new §21.3905 makes the subchapter applicable to coverage under a health benefit plan issued, amended to be effective, renewed, or issued for delivery on or after January 1, 2006.

Ana Smith-Daley, Acting Associate Commissioner, Life, Health and Licensing Division, has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Smith-Daley has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of the proposed sections will be greater access to health care coverage due to availability of high deductible health plans. Any costs of compliance with the proposed new sections are the result of the 79th Legislature's (Regular Session) enactment of HB 1602, which created Chapter 1653. Accordingly the proposal, if adopted, will not have an adverse economic effect on small and micro businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on December 12, 2005 to Gene Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted simultaneously to Bill Bingham, Deputy for Regulatory Matters, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The department will consider the adoption of the proposed amendments in a public hearing under Docket Number 2627, scheduled for 9:30 a.m. on December 1, 2005, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

The amendments are proposed under the Insurance Code §§1653.003 and 36.001. Section 1653.003 provides rulemaking authority to the Commissioner of Insurance for the purpose of administering the statute and directs the Commissioner to adopt rules necessary to implement the chapter. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Chapter 1653.

§21.3901. Purpose.

The purpose of this subchapter is to implement Texas Insurance Code Chapter 1653 which allows health carriers to apply deductible or copayment requirements to benefits, including state-mandated health benefits, as necessary to qualify health benefit plans as high deductible health plans.

§21.3902. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accident and health insurance policy--means any policy or contract that provides insurance against loss resulting from:

(A) accidental bodily injury;

(B) accidental death; or

(C) sickness.

(2) Evidence of coverage--means any certificate, agreement, or contract, including a blended contract, that:

(A) is issued to an enrollee; and

(B) states the coverage to which the enrollee is entitled.

(3) Health benefit Plan--an accident and health insurance policy or evidence of coverage.

(4) Health carrier--A health insurer or health maintenance organization.

(5) Health insurer--includes

(A) a life, health, and accident insurance company;

(B) a mutual insurance company, including:

(i) a mutual life insurance company; and

(ii) a mutual assessment life insurance company;

(C) a local mutual aid association;

(D) a mutual or natural premium life or casualty insurance company;

(E) a general casualty company;

(F) a Lloyd's plan;

(G) a reciprocal or interinsurance exchange;

(H) a nonprofit hospital, medical, or dental service corporation, including a corporation operating under Texas Insurance Code Chapter 842; and

(I) another insurer issuing an accident and health insurance policy and required by law to be authorized by the department.

(6) Health maintenance organization--means a person who arranges for or provides to enrollees on a prepaid basis a health care plan, a limited health care service plan, or a single health care service plan.

(7) High deductible health benefit plan--has the meaning assigned by Section 223, Internal Revenue Code of 1986.

§21.3903. Applicability of State Mandates to High Deductible Health Plans.

Subject to §21.3904 of this subchapter (relating to Exemption from State Mandates for High Deductible Health Plans), a high deductible health plan is subject to any law mandating a minimum health insurance benefit or reimbursement.

§21.3904. Exemption from State Mandates for High Deductible Health Plans.

(a) A health carrier or other entity issuing a health benefit plan may apply deductible or copayment requirements to benefits and services, including state-mandated health benefits and services, as necessary to qualify the health benefit plan as a high deductible health plan.

(b) If a health carrier or other entity issuing a health benefit plan pursuant to subsection (a) of this section, applies to benefits or services a deductible or copayment requirement which would otherwise be in violation of state law, the carrier or other entity may apply the requirement only to the extent and in the minimum amount necessary to qualify the health benefit plan as a high deductible health plan.

§21.3905. Applicability.

This subchapter applies to coverage under a health benefit plan issued, amended to be effective, renewed, or issued for delivery on or after January 1, 2006.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 304. WATERMASTER OPERATIONS

The Texas Commission on Environmental Quality (commission) proposes amendments to §§304.1 - 304.3, 304.11 - 304.13,

304.15, 304.16, 304.21, 304.31 - 304.34, 304.42, 304.44, 304.62, and 304.63.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed rulemaking would clarify that Chapter 304 applies to all watermaster programs, other than the Rio Grande Water Division, created in accordance with Texas Water Code (TWC), Chapter 11, and all watermasters appointed by the executive director under TWC, Chapter 11. The proposed rulemaking would delete requirements regarding the repealed Wagstaff Act (TWC, §11.028), would make changes for corrective and administrative purposes and to provide clarity, would change the watermaster's reporting requirements to the water right holders, from quarterly to annually.

SECTION BY SECTION DISCUSSION

Throughout the proposed rulemaking, the transport of water and the use of watercourses would be added to the activities regulated by the rules to be consistent with 30 TAC Chapter 297 and TWC, Chapter 11.

Also throughout the rulemaking, minor changes would be made to provide consistency in the language used in the rules and to conform to the standards set out in the *Texas Legislative Council Drafting Manual*, November 2004.

The proposed amendment to §304.1, Applicability, would clarify that Chapter 304 applies to any watermaster program, other than the Rio Grande Water Division, created under TWC, Chapter 11 and any matters related to water rights within each water division or segment of a water division.

The proposed amendment to §304.2, Appointment of Watermaster, would clarify that under TWC, Chapter 11, the executive director can appoint a watermaster for each water division or segment of a water division. The proposed amendment would also clarify that an agent is one who is designated by a water right holder to act on the holders behalf.

The proposed amendment to §304.3, Definitions, would change the definition of return flow to be consistent with the definition of return water or return flow found in §297.1, Definitions, and would define a water division to include the entire water division and any segments thereof. The proposed amendment would also clarify that the definition of watermaster relates to the person appointed by the executive director under TWC, Chapter 11 and that the definitions in §297.1 are applicable to this chapter. The amendment to this section would change the reference from the Texas Water Commission to the Texas Commission on Environmental Quality.

The proposed amendment to §304.11, Difference in Operations, would conform to the Texas Register requirements and the standards set out in the *Texas Legislative Council Drafting Manual*, November 2004.

The proposed amendment to §304.12, Identification of Diversion Facilities, Outlet Works, and Points of Return, would add the term ". . . or watercourses." to clarify that the transport of water is an activity regulated by the watermaster in his administration of bed and banks authorizations and the execution of his duties.

The proposed amendment to §304.13, Requirement for Measuring Devices, would conform to the Texas Register requirements and the standards set out in the *Texas Legislative Council Drafting Manual*, November 2004.

The proposed amendment to §304.15, Declarations of Intent To Divert or Release Water, would change the section title to "Declarations of Intent to Divert, Transport, or Release Water. In addition, the proposed amendment would clarify that the transport of water is an activity regulated by the watermaster in his administration of bed and banks authorizations and the execution of his duties.

The proposed amendment to §304.16, Records of Diversions, Releases, and Impoundments, would change the section title to Records of Diversions, Transport, Releases, and Impoundments. The proposed amendment would clarify that the transport of water is an activity regulated by the watermaster in his administration of bed and banks authorizations and the execution of his duties.

The proposed amendment to §304.21, Allocation of Available Waters, would delete requirements relative to TWC, §11.028 (Wagstaff Act), which has been repealed, and would reletter the subsequent subsections. The proposed amendment would also correct the references to other commission rules by adding a reference to §297.57, Emergency Suspension of Permit Conditions, and deleting the reference to §297.61, Amendments by Executive Director. In addition, the proposed amendment would delete the provision that a failure to comply with a watermaster order is a violation of the TWC since the provision is duplicative of the regulations found in Chapter 304, Subchapter D.

The proposed amendment to §304.31, General, would clarify that a failure to comply with the commission's rules or the watermaster's or commission orders could result in enforcement proceedings.

The proposed amendment to §304.32, Violations, would clarify that a failure to comply with the commission's rules or a watermaster or commission order could result in enforcement proceedings.

The proposed amendment to §304.33, Enforcement Actions, would add "transport" to paragraph (2) to clarify that the watermaster may take action for a violation of a bed and bank authorization and to incorporate minor editorial changes to ensure the language conforms to the Texas Register requirements.

The proposed amendment to §304.34, Field Citation by Watermaster, would incorporate minor editorial changes to ensure the language conforms to the Texas Register requirements. In addition, the proposed amendment to the figure in subsection (d) would add the terms "use" and "transport" to clarify that a violation of a bed and bank authorization is a violation subject to a field citation issued by the watermaster.

The proposed amendment to §304.42, Reports, would change the watermaster reporting requirements to the water right holders, from quarterly to annually.

The proposed amendment to §304.44, Appointment of an Agent, would add the words "transport" and "water" to the activities regulated by the rule to be consistent with Chapter 297 and TWC, Chapter 11.

The proposed amendment to §304.62, Determination of Assessment Rates, would provide specificity regarding the fees that are currently assessed for various uses authorized by statute. The proposed amendment would also provide consistency with existing permits use types. Explanatory statements regarding the specified uses were added to provide clarity.

The proposed amendment to §304.63, Assessment of Cost, incorporate minor editorial changes to ensure the language conforms to Texas Register requirements.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, minor fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. A change from quarterly reports from the watermaster to the water right holders, to a single annual report under the proposed rulemaking could save the agency as much as $1,200 in terms of reduced preparation costs. No fiscal impact is anticipated for other units of state or local governments. The proposed rulemaking would amend various sections of Chapter 304, so that rules regarding watermaster programs are more easily understood and consistent with rules found in Chapter 297. The rulemaking would have no effect on the amount of fees watermasters assess water right holders under a watermaster program.

The proposed rules would clarify that Chapter 304 applies to any watermaster, other than the Rio Grande Water Division, program created under TWC, Chapter 11, and any matters related to water rights within each water division or segment of a water division. This would include the Concho River Watermaster Program created by House Bill (HB) 2815, 79th Legislature, 2005. The proposed rulemaking also clarifies that the executive director, under TWC, Chapter 11, can appoint a watermaster for each water division or segment of a water division. The proposed rulemaking would also amend activities and definitions found in Chapter 304 so that the chapter is consistent with the activities and definitions found in 30 TAC Chapters 295 and 297 regarding transport of water, use of watercourses, return flow, return water, and water division. The proposed rulemaking would also delete requirements relative to the repealed Wagstaff Act, clarify that enforcement proceedings may result if there is a failure to comply with commission rules or a watermaster or commission order, and change the quarterly reporting requirement for watermasters to an annual reporting requirement. Some fees, which have been assessed under the current rules as part of more general rate descriptions, would be specifically identified in assessment formulas under the proposed rulemaking. These specific rates will allow watermaster programs to become more consistent with water rights permits issued under Chapter 297. Since these uses have been charged as part of a general, combined fee in the past, and the proposed rulemaking does not impact the amount or rate of the fee assessment, no fiscal impact for local governments is anticipated as a result of the proposed rules.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes will be more consistency with other water rights rules and more streamlined watermaster operations, which would allow watermasters to focus more attention and time on water rights issues.

No fiscal impact is anticipated for individuals or businesses under the proposed rules. Fees that have been charged under the current rules will continue to be charged under the proposed rules. However, the proposed rulemaking will provide more clarity regarding the specific fees charged to water right holders.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Fees that have been charged under the current rules will continue to be charged under the proposed rulemaking. However, the proposed rules would provide more clarity regarding the specific fees charged to water right holders.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rules are not subject to §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in the Texas Government Code. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The primary purposes of this proposed rulemaking action are: 1) to clarify that Chapter 304 is applicable to the Concho River Watermaster Program created by HB 2815; 2) to clarify the existing fee structure to establish specific rates for currently permitted general uses that were enacted by the legislature; 3) to delete references to the repealed Wagstaff Act; 4) to change the watermaster's reporting frequency to the water right holders from quarterly to annually; 5) to clarify that the watermaster regulates the use of watercourses; 6) to provide consistency between the commission's rules regulating water rights by changing the definition of return flows in Chapter 304 to that currently found in Chapter 297; 7) to clarify the definition of agent; 8) to clarify that the definition of water division includes any segments of a water division; and 9) to provide consistency in the language used in the commission's other water rights rules and to conform to the standards set out in the *Texas Legislative Council Drafting Manual*.

Regarding the Concho River, the 79th Legislature enacted HB 2815 creating the Concho River Watermaster Program by adding TWC, Chapter 11, Subchapter K. TWC, §11.561 provides that "{a} provision of {the Water Code} or a rule adopted by the commission that relates to watermasters and does not conflict with the provisions of {subchapter K} applies to the program established under this subchapter." Therefore, since Chapter 304 contains rules adopted by the commission that relate to a watermaster, it is already applicable to the Concho River Watermaster Program to the extent that it does not conflict with HB 2815. Section 304.1 states that it is currently "applicable to each water division created by the commission pursuant to the Texas Water Code, §11.325, outside of the Rio Grande Water Division, and to all water rights and matters related to water rights within each such water division . . .." Changing the reference from §11.325 to Chapter 11 would clarify that Chapter 304 is applicable to any water division or watermaster program, other than the Rio Grande Water Division, created under TWC, Chapter 11.

In addition, this rulemaking proposes to clarify existing general assessment fees for agricultural and other specific uses that

were added by the legislature as separate water rights and are issued in existing water rights. This rulemaking also proposes to delete references to the Wagstaff Act, originally codified in TWC, §11.028, which was repealed by the legislature in 1997. Therefore, this proposed rulemaking seeks to streamline, clarify, and update existing rules in response to legislative action.

Furthermore, this proposed rulemaking addresses administrative issues concerning the watermaster program and does not address environmental risks or exposures. For example, this rulemaking would add references to "transport" and "watercourses" to clarify that the watermaster regulates the use of watercourses in his division. These authorizations are issued by the commission under §297.16. Once they are issued, the watermaster administers these authorizations within his area. This rulemaking would also change the definition of water division to clarify that the definition also includes any segments of a water division. In addition, the rulemaking proposes to provide consistency between the commission's rules on water rights by changing the definition of return flows in Chapter 304 to the definition currently used in Chapter 297. Changes are also proposed to add and correct references to other commission rules and statutes regulating water rights. The proposed rulemaking would also make stylistic changes in conformance with the *Texas Legislative Council Drafting Manual* and would reduce the watermaster's reporting requirements to the water right holders from quarterly to annually. Therefore, this proposed rulemaking does not constitute a major environmental rule, and is not subject to a formal regulatory analysis.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates that the proposed government action would have no impact on private real property.

The purpose of this proposed rulemaking is to streamline and clarify the watermaster program and to update existing rules in response to legislative action. In order to achieve this purpose, the commission is proposing the following actions: 1) clarify the applicability section to so that it is clear that Chapter 304 applies to any water division or watermaster program, other than the Rio Grande Water Division created under TWC, Chapter 11; 2) amend the existing fee structure to establish specific rates for currently permitted general uses that were enacted by the legislature; 3) delete references to the repealed Wagstaff Act; 4) change the frequency of the watermaster's reporting to the water right holders from quarterly to annually; 5) add references to "transport" and "watercourse" to clarify that the watermaster administers bed and bank authorizations once issued by the commission; 6) change the definition of return flows in Chapter 304 to that currently stated in other commission rules to provide consistency in regulating water rights; 7) to clarify the definition of agent; 8) amend the definition of water division to include segments of a water division; 9) add references to other commission rules and statutes regulating water rights; and 10) make other revisions to provide consistency in the language used in the commission's other water rights rules and to conform to the standards set out in the *Texas Legislative Council Drafting Manual*. These actions would not impact private real property rights.

As defined by Texas Government Code, §2007.002(1), the commission is a "governmental entity" covered by the Texas Private Real Property Rights Preservation Act (the Act) codified in Chapter 2007. This proposed rulemaking is a governmental action to which the Act applies since Texas Government Code, §2007.003(a)(1) makes the Act applicable to "the adoption . . . of a rule . . .." Texas Government Code, §2007.002(4) provides that "(p)rivate real property' means an interest in real property recognized by common law, including a . . . groundwater or surface water right of any kind . . .." However, this proposed rulemaking, if adopted, would not result in a burden or impact on private real property rights, nor restrict or limit any owner's right to such property that would exist in the absence of this rulemaking.

Regarding the Concho River Watermaster Program, this proposed rulemaking would clarify that the commission's existing Chapter 304 rules already apply to the program as required by statute. The 79th Legislature enacted HB 2815 and established the Concho River Watermaster Program effective September 1, 2005. Newly enacted TWC, §11.561 states that "(a) provision of (the Water Code) or a rule adopted by the commission that relates to watermasters and does not conflict with the provisions of (Water Code, Chapter 11, subchapter K) applies to the (Concho River Watermaster Program)." This proposed rulemaking would clarify that the existing rules found in this chapter are already applicable to the Concho River Watermaster Program as dictated by HB 2815, as well as any other water division created under TWC, Chapter 11, other than the Rio Grande Water Division. Therefore, these proposed amendments do not affect an owner's private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rules. The adoption of the proposed changes to Chapter 304 would have no impact on private real property since, by statute, Chapter 304 already applies to the Concho River Watermaster Program if it does not conflict with TWC, Chapter 11, Subchapter K. Also, the changes are administrative in nature and do not affect the actual water right or interbasin use.

Regarding the other proposed changes, the establishment of a fee structure, the deletion of provisions relating to the repealed Wagstaff Act, the addition of references to applicable rules and statutes, the changes in the definitions of water division and return flows, the change in the watermaster reporting to the water right holders from quarterly to annually, and stylistic changes are administrative changes to existing rules and these changes have no impact on private real property since they are administrative in nature. The addition of the terms "transport" and "watercourses" do not affect private real property since bed and banks authorizations are authorizations to use watercourses for delivering water down beds and banks as specified in TWC, §11.042. The other proposed changes streamline, clarify, and update the commission's rules as well as provide consistency with the commission's other regulations. Therefore, since the proposed rulemaking is administrative in nature, it would neither impose a burden nor have an impact on private real property.

Furthermore, promulgation and enforcement of these proposed rules would not result in a statutory or a constitutional taking of private real property. The rulemaking, if adopted, would not restrict or limit the owner's rights to property nor reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. A water right is a private real property right, however, water right holder's rights are regulated under existing statutory law, which this rulemaking does not change.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the rules are neither identified in the Coastal Coordination Council Act Implementation Rules, 31 TAC §505.11, nor would they affect any action/authorization as identified in §505.11. Therefore, the proposed rulemaking is not subject to the Coastal Management Program.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas, 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-031-304-CE. Comments must be received no later than 5:00 p.m., December 12, 2005. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Patricia Hooper of the Field Operations Division at (512) 239-0436.

SUBCHAPTER A. INTRODUCTORY PROVISIONS

30 TAC §§304.1 - 304.3

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, Rules; §11.042, Delivering Water Down Banks and Beds; §11.325, Water Divisions; §11.326, Appointment of Watermaster; §11.327, Duties of Watermaster; §11.453, Appointment of Watermaster; §11.454, Duties and Authority of the Watermaster; §11.455, Assessments; §11.555, Duties and Authority of Watermaster; and §11.561, Applicability of Other Law and Commission Rules.

The proposed amendments implement TWC, §§5.103, 11.042, 11.325 - 11.327, 11.453 - 11.455, 11.555, and 11.561.

§304.1. Applicability.

Other than the Rio Grande Water Division, the [~~The~~] provisions of this chapter are applicable to each water division created by the commission or watermaster program created by or under [~~pursuant to the~~] Texas Water Code, Chapter 11 [~~§11.325~~], each watermaster appointed by the executive director under Texas Water Code, Chapter 11 [~~outside of the Rio Grande Water Division~~], and to all water rights, permits, authorizations, orders, and any other matters related to water rights within each [~~such~~] water division or segments of a water division. Water rights and matters inside the Rio Grande Water Division are governed by Chapter 303 of this title (relating to Operation of the Rio Grande). All other rules promulgated by the commission are also applicable to the water rights subject to this chapter unless in conflict with the provisions of this chapter, in which event the provisions of this chapter will [~~shall~~] govern.

§304.2. Appointment of Watermaster.

Under Texas Water Code, Chapter 11, the [~~The~~] executive director may appoint one watermaster for each water division, segment of a water division, or the same person may be appointed watermaster for two or more water divisions or segments. In a water division in which the office of watermaster is vacant, the executive director has the powers of a watermaster.

§304.3. Definitions.

The following words and terms, when used in this chapter, [~~shall~~] have the following meanings, unless the context clearly indicates otherwise. In addition, the definitions in §297.1 of this title (relating to Definitions) are applicable to this chapter.

(1) Account--The record of diversion, transport, and use of state water and watercourses maintained by the watermaster for each purpose of use authorized for each owner's separate portion of a water right, or the record of impoundment and releases for each owner's separate portion of an on-channel reservoir authorized under a water right, except those reservoirs exempted in accordance with [~~the~~] Texas Water Code, §11.142. An account will also be established for each separate arrangement by a contractual buyer to purchase state water.

(2) Agent--A person that designated by a water right holder [~~who wishes~~] to act on [~~in~~] behalf of a water right holder in regard to diversion use, transport, or impoundment of state water, payment of a watermaster assessment, or, for a contractual buyer, in regard to diversion, transport, use, or impoundment of state water.

(3) - (4) (No change.)

(5) Contractual buyer--A person that [~~who~~] impounds, or diverts water under a contractual permit, or under a particular water right under [~~pursuant to a~~] contract with the holder of that water right, where such contract has been accepted for filing by the executive director.

(6) Declaration of intent--A statement submitted by a diverter to the watermaster describing an intent under a specific water right or contractual purchase arrangement to divert or transport water, or to make a dedicated release of stored water, for a specified period of time and in association with an authorized facility.

(7) (No change.)

(8) Diversion facility--Any dam, pump, canal, or other such device used to take water, for other than exempt uses, from a watercourse or impoundment.

(9) Diverter--Any water right holder, agent, or contractual buyer who impounds, takes, diverts, transports, or makes a dedicated release of state water.

(10) Measuring device--A device designed for the measurement of rates of flow or [~~and/or~~] quantities of water.

(11) Report of diversion, transport, release, or impoundment--A report that [~~which~~] the diverter is required to submit to the watermaster after recording the amount of water actually diverted, transported, or released during the period of a declaration of intent, or a report for the impoundment of water, as well as any additional information required by the watermaster. The watermaster may specify a report period that is different from the declaration of intent period.

(12) Return water or return flow--That portion of state water diverted from a water supply and beneficially used and which is not consumed as a consequence of that use and returns to a watercourse. Return flow includes sewage effluent [~~The entry into a stream or reservoir of water following its use for municipal, industrial, irrigation or other purposes~~].

(13) (No change.)

(14) Water division--A specific area of the state, designated by the commission under [~~pursuant to the~~] Texas Water Code, §11.325 for the purpose of administering water rights. The term "water division" includes the entire water division and any segments thereof.

(15) Watermaster--The person appointed by the executive director under Texas Water Code, Chapter 11, [~~pursuant to the Texas Water Code, §11.326(a),~~] to administer water rights in a given water division, segment of a water division, or group of water divisions.

(16) Water right--A right acquired under the laws of the state and the rules of the Texas Commission on Environmental Quality [~~Water Commission~~] to impound, divert, transport, or [~~and/or~~] use state water. Contractual permits and water contracts are not included under this definition.

(17) Water right holder--A person or entity that [~~who~~] owns a water right. In the case of divided interests, this term will apply to each separate owner.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504907
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 239-6087

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SUBCHAPTER B. REGULATION OF THE USE OF STATE WATER OR WATERCOURSES

30 TAC §§304.11 - 304.13, 304.15, 304.16

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, Rules; §11.042, Delivering Water Down Banks and Beds; §11.326, Appointment of Watermaster; §11.327, Duties of Watermaster; §11.453, Appointment of Watermaster; §11.454, Duties and Authority of the Watermaster; §11.455, Assessments; §11.555, Duties and Authority of Watermaster; and §11.561, Applicability of Other Law and Commission Rules.

The proposed amendments implement TWC, §§5.103, 11.042, 11.326, 11.327, 11.453 - 11.455, 11.555, and 11.561.

§304.11. Difference in Operations.

The executive director may establish different strategies, timetables [~~time tables~~], procedures, and other requirements for different water divisions or for different portions of a water division.

§304.12. Identification of Diversion Facilities, Outlet Works, and Points of Return.

Each diverter shall advise the watermaster of all diversion facilities, reservoir controlling works, and significant return flow points to be employed in the use of state water or watercourses. This includes borrowed and rented pumps. The watermaster shall assign an identification number for each diversion facility and the controlling works of each reservoir authorized under a water right within the water division. Also, the watermaster may assign an identification number for any point of discharge or other point at which water is returned to a watercourse or reservoir.

§304.13. Requirement for Measuring Devices.

(a) Each diverter, and each person that [~~who~~] makes a significant return flow, shall install and maintain a measuring device at such point or points as may be determined by the watermaster to be necessary for proper and efficient administration of water rights. All such measuring devices are [~~shall be~~] subject to approval of the watermaster. The measuring devices must [~~shall~~] measure within 5.0% accuracy, unless otherwise approved by the watermaster. The diverter shall provide reasonable access to such measuring device. The diverter, or person that [~~who~~] makes a return flow, shall be liable for all expenses incurred in the acquisition, installation, maintenance, and operation of such measuring devices. In the event a measuring device becomes inoperable, the diverter, or person that [~~who~~] makes a return flow, at the direction of the watermaster, shall provide an alternate method of measurement, or estimation acceptable to the watermaster.

(b) Unless required by a permit, certificate of adjudication, or other water right, the following types of diversions and return flows associated with such diversions shall be exempt from the requirement to install and maintain measuring devices; provided, however, that the watermaster may require any such diverter, or any person making return flows, to provide an alternate method of estimating diversions or return flows acceptable to the watermaster:

(1) - (3) (No change.)

(4) diversions of water for direct input from a cooling pond or [~~and/or~~] cooling reservoir into an electric steam power plant for cooling purposes and return flows of such water to a cooling pond;

(5) - (6) (No change.)

§304.15. Declarations of Intent to [~~To~~] Divert, Transport, or Release Water.

(a) Prior to diverting state water, transporting water, or making a dedicated release, a diverter shall submit to the watermaster a declaration expressing the diverter's intent in regard to the anticipated diversion, transport, or release. Such a declaration of intent must be submitted within the time limitations established by the watermaster. Each diverter shall divert or release water only in accordance with the statements in the declaration of intent.

(b) Each declaration of intent to divert or transport water must [~~shall~~] identify the specific account under which water is to be diverted; the amount of water to be diverted or transported; a schedule for the diversions; the diversion facility to be used; and the rate at which water will be diverted. Diversion may [~~shall~~] only be made using authorized facilities, or at points associated with the water right under which the diversion is to be made. Use of water under an irrigation water right may [~~shall~~] be only for use on the tract(s) authorized by the water right.

(c) Each declaration of intent to make dedicated releases for downstream uses must [~~shall~~] identify the specific account(s) under which water is to be released; the schedule of releases; the amount of water to be released; the specific account(s) under which the water is to be used; the actual rate at which water will be released; and the identification and location of the user. Dedicated releases will be protected only if the preceding data is provided. Dedicated releases may [~~shall~~] only be diverted at points authorized by the water right under which the release is made, or an associated approved water contract.

(d) (No change.)

(e) The watermaster shall establish the duration of time for which declarations of intent will remain in effect and may change the duration as conditions warrant. After the end of the duration of a declaration of intent, no further diversion, transport, or release of state water shall be made under that account until a new declaration of intent has been submitted to the watermaster.

(f) (No change.)

(g) The watermaster from time to time may determine that it is necessary for the proper and efficient administration of water rights that diversions, impoundments of inflows, or releases of dedicated flow in certain areas, or by certain diverters, may not be made without prior

approval by the watermaster. Any such determination will [~~shall~~] be effective for the period designated by the watermaster.

(h) (No change.)

§304.16. Records of Diversions, Transport, Releases, and Impoundments.

(a) Each diverter that [~~who~~] has submitted a declaration of intent shall submit to the watermaster a report including the actual amount of water diverted, transported, or released during the period of the subject declaration of intent. Water right owners with accounts for impoundment will submit reports of daily inflows, reservoir levels, transported volumes, diversions, and releases to the watermaster. The watermaster may specify a report period. The report period may be different from the period of the declaration of intent. The watermaster shall provide forms to be used for the reports. Each diversion or impoundment facility, including borrowed and rented pumps, used during the period of the declaration of intent shall be designated on the report by the identification number assigned by the watermaster. Reports must be complete and signed by the diverter. Reports must be received or postmarked within seven days from the termination of the period of the declaration of intent, or other report period specified by the watermaster. If such report is incomplete or not timely filed, the watermaster may cancel any existing declaration of intent for that account and allow no further impoundment, transport, diversion, or dedicated release until the report is properly filed.

(b) - (d) (No change.)

(e) In addition to the report to be submitted to the watermaster under [~~pursuant to~~] subsection (a) of this section, each water right holder or his agent shall submit to the executive director a written report of the amount of water actually diverted and used during the preceding calendar year under a specific water right in accordance with §295.202 of this title (relating to Reports). This report is required even if no water is used. The form for this report can either be one furnished by the executive director, or be a form approved by the executive director prior to the submission of the report.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER C. ALLOCATION OF AVAILABLE WATERS

30 TAC §304.21

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.103, Rules; §5.506, Emergency Suspension of Permit Conditions Relating to Beneficial Inflows to Affected Bays and Estuaries and Instream Uses; §11.042, Delivering Water Down Banks and Beds; §11.148, Emergency Suspension of Permit Conditions; §11.326, Appointment of Watermaster; §11.327, Duties of Watermaster; §11.453, Appointment of Watermaster; §11.454, Duties and Authority of the Watermaster; §11.455, Assessments; §11.555, Duties and Authority of Watermaster; and §11.561, Applicability of Other Law and Commission Rules.

The proposed amendment implements TWC, §§5.103, 5.506, 11.042, 11.148, 11.326, 11.327, 11.453 - 11.455, 11.555, and 11.561.

§304.21. Allocation of Available Waters.

(a) The allocation of water between water rights holders shall be on the basis of seniority[~~, which may be modified as provided in subsection (b) of this section~~]. The watermaster shall allocate waters in such a way as to maximize the beneficial utilization of state water, to minimize the potential impairment of senior water rights by the diversions of junior water rights holders, and to prevent waste or use in excess of quantities to which the holders of water rights are lawfully entitled.

[~~(b) In administering water rights, the watermaster shall take into account any exceptions to the priority system as directed by the commission relative to the Wagstaff Act, Texas Water Code (TWC), §11.028~~].

(b) [~~(c)~~] The executive director may request suspension of any or all special streamflow or minimum release requirements. Such a request will [~~shall~~] be considered under §297.57 of this title (relating to Emergency Suspension of Permit Conditions) or §297.61 of this title (relating to Amendments by Executive Director).

(c) [~~(d)~~] When available flow is not sufficient to meet the demands of existing declarations of intent for downstream senior rights, demands for domestic and livestock purposes that are not included under any water right, or other minimum streamflow requirements that the commission determines necessary for purposes other than protection of downstream senior and superior water rights, the watermaster may:

(1) cancel or modify, as needed, any existing declaration of intent made under [~~pursuant to~~] §304.15 of this title (relating to Declarations of Intent to Divert, Transport, or Release Water);

(2) order that water right holders with reservoir(s) allow inflows to pass through such reservoir(s) to the extent necessary to honor downstream senior water rights, demands for domestic and livestock purposes, minimum streamflow requirements, minimum release requirements, and other conditions;

(3) order that persons with reservoirs exempt from permitting under Texas Water Code [~~TWC~~], §11.142, allow inflows to pass through such reservoirs for the protection of downstream domestic and livestock users;[~~. Failure to comply with a watermaster's order under this subsection is a violation of TWC, §11.081.~~]

(4) order that diverters limit or cease diversions to the extent necessary to honor downstream senior water rights, demands for domestic and livestock purposes, minimum streamflow requirements, minimum release requirements, and other conditions; or [~~and/or~~]

(5) take any other action necessary to ensure that downstream senior water rights, demands for domestic and livestock purposes, minimum streamflow requirements, minimum release requirements, and other conditions, are administered in accordance with the laws of Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. ENFORCEMENT REGARDING WATERMASTER OPERATIONS

30 TAC §§304.31 - 304.34

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, Rules; §7.002, Enforcement Authority; §11.042, Delivering Water Down Banks and Beds; §11.081, Unlawful Use of State Water; §11.326, Appointment of Watermaster; §11.327, Duties of Watermaster; §11.453, Appointment of Watermaster; §11.454, Duties and Authority of the Watermaster; §11.455, Assessments; §11.555, Duties and Authority of Watermaster; and §11.561, Applicability of Other Law and Commission Rules.

The proposed amendments implement TWC, §§5.103, 7.002, 11.042, 11.081, 11.326, 11.327, 11.453 - 11.455, 11.555, and 11.561.

§304.31. General.

The watermaster or executive director may pursue appropriate enforcement action when there is a violation of or failure to comply with the Texas Water Code, the commission's rules, the terms of a water right, authorization, or the orders issued by the commission or watermaster [~~or a commission order or rules~~].

§304.32. Violations.

(a) It is [~~shall be~~] a violation for any person to do the following:

(1) divert, transport, use, or make a dedicated release of state water, either personally or through another, without proper authorization under the Texas Water Code or any applicable final judgment rendered by a court of competent jurisdiction, or without submitting to the watermaster a declaration of intent in accordance with §304.15(a) or (g) of this title (relating to Declarations of Intent to Divert, Transport, or Release Water);

(2) (No change.)

(3) fail to modify a declaration of intent in advance of a desired change as provided in §304.15(f) of this title [~~(relating to Declaration of Intent to Divert, or Release Water)~~];

(4) - (7) (No change.)

(8) fail to comply with any statute, rule, or commission or watermaster order [~~of the commission~~].

(b) The list of violations in subsection (a) of this section is not exclusive. In addition to other violations of Texas Water Code, Chapter 11, and the commission's rules, a failure to comply with a commission or watermaster order under this section is a violation of Texas Water Code, §11.081.

§304.33. Enforcement Actions.

When a violation under §304.32 of this title (relating to Violations) occurs, the watermaster or the executive director may seek voluntary compliance, or may pursue appropriate enforcement action. In the absence of voluntary compliance:

(1) (No change.)

(2) the watermaster may lock headgates or pumping facilities or take other necessary actions to effectively cease diversion, impoundment, transport, or release of state water under the account associated with the violation; provided, however, that for violations of §304.32(a)(4) or (5) [~~§304.32(a)(4) or (a)(5)~~] of this title [~~(relating to Violations)~~], the diverter will [~~shall~~] be given at least ten [~~10~~] days notice prior to any such action by the watermaster;

(3) - (4) (No change.)

(5) the watermaster may issue a field citation in accordance with §304.34 of this title (relating to Field Citation by Watermaster); or [~~and/or~~]

(6) (No change.)

§304.34. Field Citation by Watermaster.

(a) - (b) (No change.)

(c) If the alleged violator fails to either pay the administrative penalty or take remedial action under [~~pursuant to~~] a field citation issued under subsection (a) of this section, the executive director may proceed with enforcement action in accordance with Chapters 70 and 80 of this title (relating to Enforcement and Contested Case Hearings).

(d) Violations for which the watermaster may issue a field citation are as follows.
Figure: 30 TAC §304.34(d)
[~~Figure: 30 TAC §304.34(d)~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. ADMINISTRATION

30 TAC §304.42, §304.44

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, Rules; §11.042, Delivering Water Down Banks and Beds; §11.326, Appointment of Watermaster; §11.327, Duties of Watermaster; §11.453, Appointment of Watermaster; §11.454, Duties and Authority of the Watermaster; §11.455, Assessments; §11.555, Duties and Authority of Watermaster; and §11.561, Applicability of Other Law and Commission Rules.

The proposed amendments implement TWC, §§5.103, 11.042, 11.326, 11.327, 11.453 - 11.455, 11.555, and 11.561.

§304.42. Reports.

The watermaster shall submit an annual [~~a quarterly~~] report to each water right holder who has an account or his agent [~~who has a diver-~~

~~sion account~~]. A water right holder or agent may apply in writing to the watermaster for correction of any alleged errors in the report. Any such application must be received by the watermaster within 20 business days following the date the report from the watermaster was postmarked.

§304.44. Appointment of an Agent.

Any person purporting to act for any water right holder, in regard to diversion, transport, use, or impoundment of state water, or payment of a watermaster assessment, or for a contractual buyer, in regard to diversion, transport, use, or impoundment of state water, shall submit to the watermaster a document signed by such water right holder confirming such authority and specifying the duration of such authority.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. FINANCING WATERMASTER OPERATIONS

30 TAC §304.62, §304.63

STATUTORY AUTHORITY

The amendments are proposed under TWC, §5.103, Rules; §11.042, Delivering Water Down Banks and Beds; §11.326, Appointment of Watermaster; §11.327, Duties of Watermaster; §11.329, Compensation and Expenses of Watermaster; §11.453, Appointment of Watermaster; §11.454, Duties and Authority of the Watermaster; §11.455, Assessments; §11.555, Duties and Authority of Watermaster; §11.558, Fees; and §11.561, Applicability of Other Law and Commission Rules.

The proposed amendments implement TWC, §§5.103, 11.042, 11.326, 11.327, 11.329, 11.453 - 11.455, 11.555, 11.558, and 11.561.

§304.62. Determination of Assessment Rates.

(a) After a commission order is issued approving the assessment income needed for the watermaster operations for the assessment period under consideration, the executive director shall calculate assessment rates for water use, transport, and storage for each water division, or group of divisions, based on the following formula.
Figure: 30 TAC §304.62(a)
[~~Figure: 30 TAC §304.62(a)~~]

(b) After the assessment rate for municipal use has been determined, the assessment rates for the other uses or for storage must [~~shall~~] be calculated as the mathematical product of the municipal assessment rate and the rate factor for each use or for storage.

§304.63. Assessment of Cost.

(a) To determine the amount of assessment for each assessment account, computations will [~~shall~~] be made by adding together a base charge as specified in the commission order adopted in accordance with §304.61 of this title (relating to Costs of Administration) and, as applicable, either or both of the following:

(1) a user fee, which is the mathematical product of the total assessment account and the appropriate assessment rate as determined by §304.62 of this title (relating to Determination of Assessment Rates); provided, however, that if the water right authorizes more than one type of use, and if the maximum amount of water authorized to be used annually for all uses (the maximum total authorization) is less than the sum of the maximum amounts authorized to be used annually for each use (the sum of all authorizations), then, in calculating the fee for each account the number to be used for the authorized amount must [~~shall~~] be the product of the maximum total authorization and a fraction whose numerator is the amount of water authorized for that use, and whose denominator is the sum of all authorizations; and also provided that the water right holder or the executive director may apply to the commission for, and the commission may grant, an order providing, for assessment purposes only, that different portions of the total amount of water authorized be applied to the various authorized uses; and

(2) a storage fee for on-channel storage, which is calculated by multiplying the total amount of water authorized for conservation storage under that assessment account by the storage assessment rate as determined by §304.62 of this title [(~~relating to Determination of Assessment Rates~~)]. For any water right authorizing storage and more than one type of use for the same owner, the storage fee for that owner's total storage authorization must [~~shall~~] be applied to the assessment account for any one of the uses associated with that owner.

(b) The assessment must [~~shall~~] be paid to the executive director in advance of expenditures. The executive director shall specify the dates by which payments will [~~shall~~] be due, and may provide for payments in installments. Penalties and interest for the late payment of fees will [~~shall~~] be assessed in accordance with Chapter 12 of this title (relating to Payment of Fees). If fees are paid in installments, penalties and interest for late payment will [~~shall~~] be computed on the amount of the installment due. The executive director shall transmit all collections to the state treasurer to be held in a special fund to provide for the cost of the watermaster operation.

(c) Water may [~~shall~~] not be diverted, taken, stored, transported, or used by any diverter or agent while any assessment payment is delinquent.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Commission on Environmental Quality (commission) proposes amendments to §335.2 and §335.41.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 1281, 79th Legislature, 2005, added Texas Health and Safety Code (THSC), §361.0901, which requires commercial industrial solid waste facilities that receive solid waste for discharge to a publicly owned treatment works (POTW) to obtain a permit under THSC, Chapter 361, Solid Waste Disposal Act, or under Texas Water Code (TWC), Chapter 26, Texas Water Quality Control.

The commission recognizes that there are a small number of commercial industrial solid waste facilities that receive industrial solid waste for discharge to POTWs that currently are not required to obtain an industrial solid waste permit because of the wastewater treatment exemptions under §335.2 and §335.41. The proposed rules will require these facilities to obtain a permit and, at a minimum, meet certain requirements related to tank engineering and design, waste analysis, facility operations, personnel training, quality assurance, closure, and for new facilities, siting requirements. Financial assurance for closure will be required. Facilities will also be required to keep on-site appropriate plans and operating records that document compliance with these requirements. The proposed amendments will require the facility to obtain a solid waste permit issued under this chapter or an interim general permit issued under 30 TAC Chapter 205 in order to continue operations. Authorization under the general permit would be for a period not to exceed 15 months, but may be extended at the discretion of the commission in one-year increments.

SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout the proposed rules to be consistent with Texas Register requirements and agency guidelines.

The commission proposes an amendment to §335.2, Permit Required. The proposed revision to §335.2(d)(3) will remove the reference to wastewater treatment units. SB 1281 removes the exemption from permitting for wastewater treatment units that process or store industrial solid waste received on a commercial basis for discharge to a POTW. The different types of exemptions from permitting for facilities that operate wastewater treatment units currently covered under §335.2(d)(3) are now proposed to be covered under new §335.2(d)(7) - (9).

Proposed new §335.2(d)(7) exempts from permitting units that store or process nonhazardous industrial solid waste if the wastewater is discharged under a Texas Pollutant Discharge Elimination System authorization issued under TWC, Chapter 26. These units are currently covered under §335.2(d)(3).

Proposed new §335.2(d)(8) exempts from permitting units located at noncommercial solid waste management facilities that store or process nonhazardous industrial waste if the wastewater is discharged to a POTW. These units are currently covered under §335.2(d)(3).

Proposed new §335.2(d)(9) is added as a result of the implementation of THSC, §361.0901(c), which exempts from permitting certain wastewater treatment units at municipal solid waste facilities or commercial industrial solid waste landfill facilities. This exemption from permitting covers wastewater treatment units that process or store liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at a municipal solid waste or commercial industrial solid waste landfill facility if the waste is discharged to a POTW. These units are currently covered under §335.2(d)(3).

Proposed new §335.2(n) is added as a result of the implementation of THSC, §361.0901(b). This section will require owners or operators of commercial industrial solid waste management facilities that receive industrial solid waste for treatment and/or storage for discharge to a POTW to acquire a permit issued under §335.2. Existing facilities may obtain authorization under an interim general permit issued under Chapter 205 in order to continue operations until the issuance of the solid waste permit. The general permit will authorize operation of the facility for a maximum term of 15 months in order to continue operations. Authorization may be extended at the discretion of the commission on an individual basis in one-year increments. The facility must be authorized to continue operations under the general permit or an individual solid waste permit by June 1, 2006. Facilities that apply for a general permit to continue operations must also submit to the commission appropriate information to demonstrate compliance with the financial assurance requirements for closure of industrial solid waste facilities in accordance with 30 TAC Chapter 37, Subchapter P, Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities, by June 1, 2006. All owners or operators of facilities that are operating under a Chapter 205 general permit shall submit an application for an individual solid waste permit by September 1, 2006.

The commission proposes an amendment to §335.41, Purpose, Scope and Applicability. The proposed revision to §335.41(d)(1) will remove the reference to wastewater treatment units. SB 1281 removes the exemption from permitting for wastewater treatment units that process or store industrial solid waste received on a commercial basis for discharge to a POTW. The exemptions from permitting for facilities that operate hazardous wastewater treatment units currently covered under §335.41(d)(1) are now proposed to be covered under new §335.41(d)(5) - (8).

Proposed new §335.41(d)(5) exempts from permitting units that store or process hazardous industrial solid waste that is discharged under a Texas Pollutant Discharge Elimination System authorization issued under TWC, Chapter 26. These units are currently covered under §335.41(d)(1).

Proposed new §335.41(d)(6) exempts from permitting units located at noncommercial solid waste management facilities that store or process hazardous industrial waste that is discharged to a POTW. These units are currently covered under §335.41(d)(1).

Proposed new §335.41(d)(7) is added as a result of the implementation of THSC, §361.0901(c), which exempts from permitting certain wastewater treatment units at municipal solid waste facilities or commercial industrial solid waste landfill facilities. This exemption from permitting covers wastewater treatment units that process or store hazardous industrial liquid wastes that are incidental to the handling, processing, storage, or disposal of solid waste and discharged to a POTW. These units are currently covered under §335.41(d)(1).

Proposed new §335.41(d)(8) is added as a result of the implementation of THSC, §361.0901(b) and exempts owners or operators of commercial industrial solid waste management facilities that receive hazardous waste for discharge to a POTW from the permitting requirements of Subchapters E and F of this chapter, but will require these facilities to acquire a permit issued under

§335.2 or Chapter 205. These units are currently covered under §335.41(d)(1).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, minor fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The agency will be required to implement a new permit program and perform additional inspection duties for a small number of commercial industrial solid waste facilities. Agency revenue is anticipated to increase, though not by a significant amount. The implementation of the permit program will be accomplished using current agency resources, thus no cost increases are anticipated. No fiscal implications are anticipated for other units of state or local governments.

The proposed rules implement the provisions of SB 1281 and will require commercial industrial solid waste facilities that receive solid waste for discharge to a POTW to obtain a permit under THSC, Chapter 361, Solid Waste Disposal Act, or an interim general permit under TWC, Chapter 26, Water Quality Control, until a decision is made on whether to issue an individual solid waste permit. It is known that the proposed rules will affect at least one, and perhaps as many as five, commercial industrial solid waste facilities.

Currently, a general permit issued under Chapter 205 costs $100 per application and an annual fee of $100. The proposed rules would limit the time a commercial industrial solid waste facility may operate under a general permit to 15 months. Extensions may be granted on a case-by-case basis at the discretion of the commission in increments not to exceed one year. The facility would pay $200 for the general permit application and annual fee for the first year. If granted an extension for subsequent years, the facility would pay a $100 annual fee.

Facilities operating under a general permit will be required to obtain financial assurance to cover the costs of properly closing an industrial solid waste facility. These costs can vary widely depending on the facility and the wastes stored, but they could be as much as $200,000. The costs of obtaining financial assurance from a third party are estimated to range between 1% and 5% of estimated closing costs per year. Therefore, the costs of obtaining financial assurance could be as much as $10,000 per year per facility.

An individual permit issued under §335.2 costs $100 per application plus a $50 notice fee. In addition, facilities with a permit issued under §335.2 for Class 1 industrial and hazardous solid wastes will be assessed annual facility fees. These fees would range from $500 to $5,000 per year, depending on the number of waste management units subject to permit authorization.

Agency revenue in the Waste Management Account 549 may increase by as much as $150 to $25,750 in the first year the rules are implemented depending on the type of permit applied for and the number of entities that will be subject to the rules. Revenue increases in the second year of implementation will be $100 per permit if a general permit is granted under Chapter 205 and from $500 to $25,000 per year if an individual permit is issued under §335.2.

Given the small number of facilities anticipated to be affected by the proposed rules, the agency does not anticipate a significant increase in operating costs when implementing the rules. Any cost increases associated with this rulemaking are expected to be paid from the agency's existing budget. If, in the future, there is a significant increase in the number of facilities subject to the proposed rules, operating costs may increase by a significant amount.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and the continued protection of the public health and the environment.

The proposed rules may affect large businesses that own or operate commercial industrial solid waste facilities that receive solid waste for discharge to a POTW. If a large business decided to apply for a permit as proposed by the rules, it could expect to incur application costs of $100 and a $100 annual fee for a general permit under Chapter 205 for the first year of operation. If granted an extension for subsequent years of operation under the general permit, the business would have to pay a $100 annual fee. The business would have to obtain a permit issued under §335.2 to operate and would incur the costs associated with a §335.2 permit. The cost of completing the application for an individual permit could range from $25,000 to $50,000 depending on the size and complexity of the facility.

For a permit under §335.2, the application costs are $100 per application with a $50 notice fee. If an individual permit is issued under §335.2 for the management of Class 1 or hazardous wastes, then an annual facility fee will be assessed. The fee could range from $500 to $5,000 per year. Individual permits issued under §335.2 would require a business to publish notice of the permit application in a newspaper. A general permit issued under Chapter 205 would require the agency to publish notice of the proposed permit in a newspaper. Publication costs could be as much as $1,000 per notice, depending on which newspaper is chosen.

For an individual permit under Chapter 335, there may be costs associated with a contested case hearing. The costs associated with a contested case hearing could range from as much as $30,000 to $50,000.

Financial assurance for closure will be required for existing facilities that will continue to operate under a general permit issued under Chapter 205. Owners and operators would need to obtain sufficient financial assurance to cover the costs of properly closing the facility. Owners and operators would need to calculate the costs of properly closing the facility in order to determine how much financial assurance they would need to have in place. Financial assurance costs will vary depending upon the specific facility, as well as the financial strength and size of the owners/operators. If affected owners and operators do not meet the qualifications of the financial test, they could obtain financial assurance in the form of a surety bond, letter of credit, trust, or the purchase of an insurance policy. These costs are estimated to range between 1% and 5% per year of the cost of closing the facility.

Costs to properly close commercial industrial solid waste facilities that receive waste for discharge to a POTW are estimated to range up to $200,000 depending upon the amount and type of material that would need to be disposed of, and the method of disposal. For the purposes of this fiscal note, it is assumed that for the estimated one to five affected facilities, costs to properly close the facility could range up to $200,000. Further, the cost

to obtain proper financial assurance is estimated to be 5% of the closure costs, and therefore is estimated to be up to $10,000 per year for each of the estimated affected facilities.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications, which could be significant depending on the type of permit sought, are anticipated for small or micro-businesses. It is known that at least one, and perhaps as many as five, small or micro-businesses will be subject to the proposed rules. A small business is defined as having fewer than 100 employees or less than $1 million in annual gross receipts. A micro-business is defined as having no more than 20 employees.

Application costs for a general permit issued under Chapter 205 are estimated to be $100 per application, plus $100 per year for an annual fee. The general permit would be limited to 15 months but extensions may be granted at the discretion of the commission in increments not exceeding one year. A facility would be required to obtain a §335.2 permit. Costs per employee could be as much as $2.00 in the first year of implementation of a general permit. Costs per employee are estimated to be $1.00 per employee per year during subsequent years of implementation for a general permit. Financial assurance costs, which could be as high as $10,000 per year, could be as much as $100 per employee. Costs to complete an application for an individual permit, which range from $25,000 to $50,000, could cost as much as $250 to $500 per employee.

Application costs under §335.2 are estimated to be $100 per application with a $50 notice fee. Publication costs for publishing the required public notice could be as much as $1,000. Costs associated with contested case hearings could range from $30,000 to $50,000. Annual facility fees for individual permits issued under §335.2 could range from $500 to $5,000 per year. For a small business applying for this type of permit, the cost per employee, if such a contested case hearing is required, could be as much as $307 to $552 during the first year of implementation. Annual facility fees for individual permits issued under §335.2 could range from $5.00 to $50 per employee per year during the second through the fifth years of implementation.

For a micro-business, the cost to apply for a permit under Chapter 205 is estimated to be $10 per employee during the first year of implementation and $5.00 per employee per year in the second year if an extension is granted. Financial assurance costs could cost $500 per employee, and the costs to apply for an individual permit could cost from $1,250 to $2,500 per employee.

The costs for a micro-business to apply for a permit under §335.2 may range from as much as $1,533 to $2,758 per employee during the first year of implementation if a contested case hearing is required. Annual facility fees for individual permits issued under §335.2 could range from $25 to $250 per employee per year during the second through the fifth years of implementation.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The specific intent of the proposed rules is to require commercial industrial solid waste facilities that receive solid waste for discharge to a POTW to obtain a permit under THSC, Chapter 361, Solid Waste Disposal Act. Therefore, it is not anticipated that the proposed rules will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed rules do not meet the definition of a major environmental rule.

Furthermore, even if the proposed rules did meet the definition of a major environmental rule, the rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these requirements. First, while these rules may exceed a standard set by federal law by requiring a permit for commercial industrial solid waste facilities that receive waste for discharge to a POTW, they are specifically required by state law. Second, the proposed rules do not exceed an express requirement of state law but instead implement statutory requirements for commercial industrial solid waste facilities that receive solid waste for discharge to a POTW. Third, there is no delegation agreement that would be exceeded by these proposed rules because no agreement relates to this subject matter area. Fourth, the commission proposes these rules under the rulemaking direction of SB 1281 and not solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these rules and performed an assessment of whether the rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to require commercial industrial solid waste facilities that receive industrial solid waste for discharge to a POTW to obtain a permit under THSC, Chapter 361, Solid Waste Disposal Act. The proposed rules would substantially advance this stated purpose by removing an existing exemption from permitting for wastewater treatment units that process or store industrial solid waste received on a commercial basis for discharge to a POTW. Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property because the proposed rules do not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed rules would improve the commission's

ability to ensure proper management of industrial solid waste. Because the proposed rules do not affect real property, they do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq*., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include the goals to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal waters and to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing coastal natural resource areas, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone.

CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities. The agency shall comply with the policies of 31 TAC §501.19 when issuing permits and adopting rules under THSC, Chapter 361.

The rules are consistent with and comply with the policies of 31 TAC §501.19 when issuing permits and adopting rules under THSC, Chapter 361.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin, Texas, on November 21, 2005, at 2:00 p.m. at the Texas Commission on Environmental Quality complex in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Lola Brown at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-045-335-PR. Comments must be received by 5:00 p.m. on December 12, 2005. Copies of the proposed rules can be obtained from the commission's Web Site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Lynn Bell, Industrial and Hazardous Waste Permits Section, at (512) 239-6603.

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §335.2

STATUTORY AUTHORITY

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; §5.103 and §5.105, which establish the commission's general authority to adopt rules; §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; and THSC, §361.011, which provides the commission with the authority to manage municipal waste; §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; §361.017, which provides the commission with powers and duties necessary or convenient to manage industrial solid waste activities; §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste; and §361.0901, as added by SB 1281, which requires commercial industrial solid waste facilities that receive solid waste for discharge to a POTW to obtain a permit under THSC, Chapter 361, Solid Waste Disposal Act, or under TWC, Chapter 26, Water Quality Control.

The proposed amendment implements SB 1281.

§335.2. Permit Required.

(a) Except with regard to storage, processing, or disposal to which subsections (c) - (h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) and §335.25 of this title (relating to Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit,

or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the [~~Texas~~] Department of State Health Services (DSHS) [~~(TDH)~~], or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b) (No change.)

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the commission approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency (EPA) [~~EPA~~] or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities that [~~which~~] satisfied this requirement by filing an application on or before November 19, 1980, with the EPA are not required to submit a separate application with the DSHS [~~TDH~~]. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Texas Solid Waste Disposal Act [~~TSWDA~~] (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act (RCRA) [~~RCRA~~], 42 United States Code, §§6901 *et seq*., that render the facilities [~~facility~~] subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regulations by the EPA under RCRA, which first require them to comply with the standards [~~set forth~~] in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards [~~set forth~~] in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the EPA by March 24, 1987, as required by 40 Code of Federal Regulations (CFR) §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title. For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(1) - (2) (No change.)

(d) No permit shall be required for:

(1) - (2) (No change.)

(3) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in an elementary neutralization unit [~~, or a wastewater treatment unit~~];

(4) (No change.)

(5) the storage of nonhazardous industrial solid waste, if the waste is stored in a transfer facility in containers for a period of ten [~~10~~] days or less, unless the executive director determines that a permit should be required in order to protect human health and the environment; [~~or~~]

(6) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a publicly owned treatment works with discharges subject to regulation under the Clean Waste Act, §402, as amended through October 4, 1996, if the owner or operator has a National Pollutant Discharge Elimination System permit and complies with the conditions of the permit; [~~.~~]

(7) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater unit and is discharged in accordance with a Texas Pollutant Discharge Elimination System authorization issued under Texas Water Code, Chapter 26;

(8) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater treatment unit that discharges to a publicly owned treatment works and the units are located at a noncommercial solid waste management facility; or

(9) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a wastewater treatment unit that discharges to a publicly owned treatment works liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at municipal solid waste facilities or commercial industrial solid waste landfill facilities.

(e) - (f) (No change.)

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste that [~~which~~] is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements in [~~set out at~~] 40 CFR §261.4(e) and (f), as amended and adopted in the CFR through February 18, 1994, as published in the *Federal Register* (59 FR 8362), which are adopted [~~herein~~] by reference.

(h) A person may obtain authorization from the executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill that [~~which~~] has qualified for interim status in accordance with 40 CFR Part 270, Subpart G, and that [~~which~~] has complied with the standards [~~set forth~~] in Subchapter E of this chapter, by complying with the notification and information requirements [~~as set forth~~] in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or grant the request for authorization subject to conditions, which may include, without limitation, public notice[~~,~~] and technical requirements. A request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of 40 CFR §265.301(a). In accordance with §335.6 of this title, such person shall not engage in the requested activities if denied by the executive director or unless 90 days' notice has been provided and the executive director

approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

(1) (No change.)

(2) polychlorinated [~~Polychlorinated~~] biphenyl compounds wastes subject to regulation by 40 CFR Part 761;

(3) - (8) (No change.)

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under 40 CFR §270.1(c)(5) and (6), or obtain an order in lieu of a post-closure permit, as provided in subsection (m) of this section. If a post-closure permit is required, the permit must address applicable provisions of 40 CFR Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) provisions concerning groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements [~~relating to Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-closure Care Requirements~~]. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(j) - (l) (No change.)

(m) [~~Order in lieu of a post-closure permit.~~] At the discretion of the commission, an owner or operator may obtain a post-closure order in lieu of a post-closure permit for interim status units, a corrective action management unit unless authorized by a permit, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units. The post-closure order must address the facility-wide corrective action requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and groundwater monitoring requirements of §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response).

(n) Except as provided in subsection (d)(9) of this section, owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works are required to obtain a permit under this subchapter. By June 1, 2006, owners or operators of existing commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works must have a permit issued under this subchapter or obtain a general permit issued under Chapter 205 of this title (relating to General Permits for Waste Discharges) to continue operating. A general permit issued under Chapter 205 of this title will authorize operations until a final decision is made on the application for an individual permit. The general permit shall authorize operations for a maximum period of 15 months except that authorization may be extended on an individual basis in one-year increments at the discretion of the commission. Should an application for a general permit issued under Chapter 205 of this title be submitted, the applicant shall also submit to the commission, by June 1, 2006, the appropriate information to demonstrate compliance with financial assurance requirements for closure of industrial solid waste facilities in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities). Owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works operating under a general permit issued under Chapter 205 of this title shall submit an application for a permit issued under this subchapter prior to September 1, 2006.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504904
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 239-0348

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SUBCHAPTER B. HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS

30 TAC §335.41

STATUTORY AUTHORITY

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; §5.103 and §5.105, which establish the commission's general authority to adopt rules; §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; and THSC, §361.011, which provides the commission with the authority to manage municipal waste; §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; §361.017, which provides the commission with powers and duties necessary or convenient to manage industrial solid waste activities; §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste; and §361.0901, as added by SB 1281, which requires commercial industrial solid waste facilities that receive solid waste for discharge to a POTW to obtain a permit under THSC, Chapter 361, Solid Waste Disposal Act, or under TWC, Chapter 26, Water Quality Control.

The proposed amendment implements SB 1281.

§335.41. Purpose, Scope, and Applicability.

(a) The purpose of this chapter is to implement a state hazardous waste program which controls from point of generation to ultimate disposal those wastes which have been identified by the administrator of the United States Environmental Protection Agency (EPA) [~~EPA~~] in 40 Code of Federal Regulations (CFR) Part 261.

(b) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing,

or Disposal Facilities); [and] Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste [,] Storage, Processing, or Disposal Facilities); [and] §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); and §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) do not apply to an owner or operator of a totally enclosed treatment facility, as defined in §335.1 of this title (relating to Definitions).

(c) Except as provided in §335.47 of this title (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule), Subchapters E and [Subchapter E of this chapter and Subchapter] F of this chapter do not apply to the owner or operator of a publicly owned [publicly-owned] treatment works (POTW) that [which] processes, stores, or disposes of hazardous waste.

(d) Subchapters E and [Subchapter E of this chapter and Subchapter] F of this chapter do not apply to:

(1) the owner or operator of an elementary neutralization unit [or a wastewater treatment unit as defined in §335.1 of this title,] provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory as defined in 40 CFR §268.40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements [set out] in 40 CFR §264.17(b);

(2) persons engaged in processing or containment activities during immediate response to a discharge of a hazardous waste; an imminent and substantial threat of discharge of hazardous waste; a discharge of a material which, when discharged, becomes a hazardous waste; or an immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in §335.1 of this title, except that:

(A) - (B) (No change.)

(C) any person who continues or initiates hazardous waste processing or containment activities after the immediate response is over is subject to all applicable requirements of Subchapters E and [Subchapter E of this chapter, Subchapter] F of this chapter and Chapter 305 of this title (relating to Consolidated Permits); and

(D) (No change.)

(3) persons adding absorbent material to waste in a container, as defined in §335.1 of this title and persons adding waste to absorbent material in a container, provided that these actions occur at the time that waste is first placed in the container, and that in the case of permitted facilities, 40 CFR §§264.17(b), 264.171, and 264.172 are complied with, and for all other facilities, 40 CFR §§265.17(b), 265.171, and 265.172 are complied with; [.]

(4) a [A] farmer disposing of waste pesticides from the farmer's [his] own use in compliance with §335.77 of this title (relating to Farmers); [.]

(5) the owner or operator of a wastewater treatment unit, as defined in §335.1 of this title, provided that the wastewater is discharged in accordance with a Texas Pollutant Discharge Elimination System authorization issued under Texas Water Code, Chapter 26, and if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory as defined in 40 CFR §268.40) or reactive (D003) waste to remove the characteristic before land disposal, must comply with the requirements in 40 CFR §264.17(b);

(6) the owner or operator of a wastewater treatment unit, as defined in §335.1 of this title, located at a noncommercial solid waste management facility that discharges to a publicly owned treatment works, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory as defined in 40 CFR §268.40) or reactive (D003) waste to remove the characteristic before land disposal, must comply with the requirements in 40 CFR §264.17(b);

(7) the owner or operator of a wastewater treatment unit, as defined in §335.1 of this title, located at a municipal solid waste facility or commercial industrial solid waste landfill disposal facility that discharges to a publicly owned treatment works liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory as defined in 40 CFR §268.40) or reactive (D003) waste to remove the characteristic before land disposal, must comply with the requirements in 40 CFR §264.17(b); or

(8) the owner or operator of a wastewater treatment unit, as defined in §335.1 of this title, located at a commercial industrial solid waste facility that receives waste for discharge to a publicly owned treatment works, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory as defined in 40 CFR §268.40) or reactive (D003) waste to remove the characteristic before land disposal, must comply with the requirements in 40 CFR §264.17(b), but is subject to the permitting requirements of §335.2(n) of this title (relating to Permit Required).

(e) Subchapter E of this chapter does not apply to:

(1) a person who stores, processes, or disposes of hazardous waste on-site and meets the requirements of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); or

(2) (No change.)

(f) The following requirements apply to residues of hazardous waste in containers.

(1) Subchapters B - F and O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste[,] Storage, Processing, or Disposal Facilities; and Land Disposal Restrictions) do not apply to any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in paragraph (2) of this subsection. This exemption does not apply to any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty.

(2) For purposes of determining whether a container is empty under this subsection, the following provisions apply:

(A) a container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e) is empty if:

(i) all wastes have been removed that can be using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

(ii) (No change.)

(iii) no more than 3.0% by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or no more than 0.3% by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size; [.]

(B) a container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmosphere; or

(C) a container or an inner liner removed from a container that has held an acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e) is empty if:

(i) - (ii) (No change.)

(iii) in the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container[,] has been removed.

(g) Subchapters B - F and O of this chapter do not apply to hazardous waste that [~~which~~] is managed as a recyclable material described in §335.24(b) and (c) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), except to the extent that requirements of these subchapters are referred to in Subchapter H of this chapter [(~~relating to Standards for the Management of Specific Wastes and Specific Types of Facilities~~)] and Chapter 324 of this title (relating to Used Oil Standards).

(h) Subchapters E and [~~Subchapter E of this chapter and Subchapter~~] F of this chapter apply to owners or operators of all facilities that [~~which~~] treat, store, or dispose of hazardous waste referred to in Subchapter O of this chapter.

(i) - (j) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504905
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 239-0348

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER F. MOTOR VEHICLE SALES TAX

34 TAC §3.63

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of existing §3.63, concerning motor vehicles purchased, leased or operated by diplomatic officials. The existing §3.63 is being repealed so that the content can be updated in a new §3.63 to reflect changes made by the United States Department of State to the procedure and policy for authorization of tax exemption on vehicles purchased by diplomatic missions and their members. The new section to be proposed will incorporate those changes.

John Heleman, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Heleman also has determined the repeal would benefit the public by clarifying the tax responsibilities of diplomatic officials on the purchase of a motor vehicle. This repeal does not require a statement of fiscal implications for small businesses adopted under Tax Code, Title 2. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This repeal is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal of the existing section and adoption of a new section implements United States Department of State, Office of Foreign Missions tax exemption procedure.

§3.63. Consular Officers and Employees.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 31, 2005.

TRD-200504954
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 475-0387

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34 TAC §3.63

The Comptroller of Public Accounts proposes new §3.63, concerning foreign diplomatic officials. This section implements changes made by the United States Department of State, Office of Foreign Missions to the procedure and policy for authorization of tax exemption.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule would benefit the public by clarifying the tax responsibilities of diplomatic official on the purchase of

a motor vehicle. This rule does not require a statement of fiscal implications for small businesses adopted under Tax Code, Title 2. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This new section is proposed under Tax Code, §111.002, and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

This new section implements United States Department of State, Office of Foreign Missions tax exemption procedure.

§3.63. Foreign Diplomatic Officials.

(a) All diplomatic missions and their members, including dependents, are required by federal law (22 U.S.C. Section 4303) to register all motor vehicles that they own or lease, with the United States Department of State, Office of Foreign Missions, Diplomatic Vehicle Office.

(b) The vendor of a motor vehicle sold in Texas must contact the Office of Foreign Missions for a determination on the tax exempt status of a purchaser. A statement will be provided by the Office of Foreign Missions to the vendor indicating the tax exempt status of the purchaser for sales tax imposed on the transaction. A copy of the statement must be kept for four years from the date of purchase. If the exemption is denied, a selling dealer licensed under Transportation Code, Chapter 503, must collect and remit tax due (see §3.74, Seller Responsibility).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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SUBCHAPTER J. PETROLEUM PRODUCTS DELIVERY FEE

34 TAC §3.151

The Comptroller of Public Accounts proposes an amendment to §3.151, concerning imposition, collection, and bonds or other security of the fee. The amendment is necessary to reflect the passage of Senate Bill 1863 by the 79th Legislature that abolished the portion of §26.3574 (b) (1, 2, 3, 4, and 5) that allowed the rates to decrease for FY 06 and FY 07 and amended the same section to allow the FY 04 and FY 05 rates to remain in effect through August 31, 2007.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing updated information concerning fee responsibilities. This rule does not require a statement of fiscal implications for small businesses adopted under Tax Code, Title 2. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Water Code, §26.3574.

§3.151. Imposition, Collection, and Bonds or Other Security of the Fee.

(a) - (b) (No change.)

(c) The fee is collected by the operator of a bulk facility from the person ordering the withdrawal. The fee is computed as follows:

(1) $10 for [~~For~~] each delivery made after August 31, 2003, and before September 1, 2007, into a cargo tank or barge having a capacity of less than 2,500 gallons;[~~:~~]

[~~(A) $10 for each delivery made after August 31, 2003, and before September 1, 2005;~~]

[~~(B) $5 for each delivery made after August 31, 2005, and before September 1, 2006;~~]

[~~(C) $2 for each delivery made after August 31, 2006, and before September 1, 2007;~~]

[~~(D) the fee is repealed effective September 1, 2007.~~]

(2) $20 for [~~For~~] each delivery made after August 31, 2003, and before September 1, 2007, into a cargo tank or barge having a capacity of 2,500 gallons or more but less than 5,000 gallons;[~~:~~]

[~~(A) $20 for each delivery made after August 31, 2003, and before September 1, 2005;~~]

[~~(B) $10 for each delivery made after August 31, 2005, and before September 1, 2006;~~]

[~~(C) $4 for each delivery made after August 31, 2006, and before September 1, 2007;~~]

[~~(D) the fee is repealed effective September 1, 2007.~~]

(3) $30 for [~~For~~] each delivery made after August 31, 2003, and before September 1, 2007, into a cargo tank or barge having a capacity of 5,000 gallons or more but less than 8,000 gallons;[~~:~~]

[~~(A) $30 for each delivery made after August 31, 2003, and before September 1, 2005;~~]

[~~(B) $15 for each delivery made after August 31, 2005, and before September 1, 2006;~~]

[~~(C) $6 for each delivery made after August 31, 2006, and before September 1, 2007;~~]

[(D) the fee is repealed effective September 1, 2007.]

(4) $40 for [For] each delivery made after August 31, 2003, and before September 1, 2007, into a cargo tank or barge having a capacity of 8,000 gallons or more but less than 10,000 gallons;[:]

[(A) $40 for each delivery made after August 31, 2003, and before September 1, 2005;]

[(B) $20 for each delivery made after August 31, 2005, and before September 1, 2006;]

[(C) $8 for each delivery made after August 31, 2006, and before September 1, 2007;]

[(D) the fee is repealed effective September 1, 2007.]

(5) $20 for [For] each increment of 5,000 gallons or any part thereof delivered after August 31, 2003, and before September 1, 2007, into a cargo tank or barge having a capacity of 10,000 gallons or more; and[:]

[(A) $20 for each delivery made after August 31, 2003, and before September 1, 2005;]

[(B) $10 for each delivery made after August 31, 2005, and before September 1, 2006;]

[(C) $4 for each delivery made after August 31, 2006, and before September 1, 2007;]

(6) [(D)] the fee is repealed effective September 1, 2007.

(d) - (y) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.337

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of existing §3.337, concerning gratuities. The existing §3.337 is being repealed so that the content can be updated in a new section §3.337 to incorporate policy clarifications regarding the requirements to exclude mandatory gratuities from the sales price of taxable items and the record-keeping requirements in relation thereto, as well as to update definitions of relevant terms.

John Heleman, Chief Revenue Estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Heleman also has determined the repeal would benefit the public by providing additional information concerning tax responsibilities. There would be no anticipated significant economic cost to the public. This repeal does not require a statement of fiscal implications for small businesses adopted under Tax Code, Title 2. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This repeal is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal implements Tax Code §151.007(c)(7).

§3.337. Gratuities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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34 TAC §3.337

The Comptroller of Public Accounts proposes new §3.337, concerning gratuities. The new section replaces the existing §3.337, which is being repealed so that the content is updated to reflect policy clarifications regarding the requirements to exclude mandatory gratuities from the sales price of taxable items and the record-keeping requirements in relation thereto, as well as to update definitions of relevant terms.

Qualified employees who perform services upon which gratuities are charged are defined in subsection (a)(2), and the total direct compensation such employees receive is defined in subsection (a)(4).

The requirements for mandatory gratuities that are and are not subject to sales tax are identified in subsection (c).

Record-keeping requirements for mandatory gratuities disbursed to employees are identified in subsection (d).

In addition to these policy clarifications, the new section has other changes in form, style, and wording to help taxpayers understand when to collect tax on gratuities. These changes are for the purpose of clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing new information

regarding tax responsibilities. This rule does not require a statement of fiscal implications for small businesses adopted under Tax Code, Title 2. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This new rule is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new rule implements Tax Code §151.007(c)(7).

§3.337. Gratuities.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Mandatory gratuity charge--Any amount required by the seller for the service of meals and food products for immediate consumption including soft drinks and candy.

(2) Qualified employees--Employees who customarily and regularly provide the service upon which a gratuity is based, including, but not limited to, waiters, waitresses, busboys, service bartenders, wine stewards, and hotel maitre d', but excluding janitorial help, chefs, cashiers, and dishwashers.

(3) Reasonable mandatory gratuity charge--Mandatory gratuity charges that do not exceed 20% of the sales price.

(4) Total direct compensation--Total salaries paid to qualified employees. The term does not include other benefits paid or incurred on an employee's behalf, such as health and life insurance, sick leave, or vacation time.

(5) Voluntary gratuity--A tip added to the bill at the suggestion of the purchaser or money given freely by the purchaser over and above the sales price.

(b) Voluntary gratuities are excluded from the sales price of taxable items.

(c) Mandatory gratuity charges.

(1) Reasonable mandatory gratuity charges are excluded from the sales price of taxable items if they are:

(A) separated from the sales price of the meal or food product served for immediate consumption;

(B) identified as a tip or gratuity by any reasonable means, including such terms as service fee or service charge; and

(C) disbursed to qualified employees. Any portion of a reasonable mandatory gratuity charge that is retained by the employer is subject to sales tax.

(2) Mandatory gratuity charges in excess of 20% are subject to sales tax regardless of how they are disbursed.

(d) Records. The employer must maintain records that demonstrate the amount of mandatory gratuity charges that have been disbursed to qualified employees. In order to comply with this requirement, the records must show:

(1) the amount of mandatory gratuity charges collected from customers and the corresponding disbursements to each qualified employee; or

(2) that the total direct compensation due all qualified employees equals or exceeds the total amount collected as mandatory gratuity charges.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 71. CREDITABLE SERVICE

34 TAC §§71.1, 71.2, 71.27, 71.31

The Employees Retirement System of Texas (ERS) proposes amendments to Title 34, Chapter 71, Texas Administrative Code. The amendments to §§71.1, 71.2 and 71.31 concern changes in the membership waiting period; the amendments to §71.27 concern certain service considered solely to establish retirement eligibility. The amendments are proposed to comply with and conform to Senate Bill 1176, 79th Legislature, Regular Session.

Section 71.1 is amended to delete subsection (e). This change is needed to update and clarify the rules regarding waiting period service. Subsection (e) is currently delineated under §71.2(g), and will now be delineated under §71.2(f).

Section 71.2, subsection (a) is amended to remove a reference to the expiration of the 90-day membership waiting period as provided by Texas Government Code, §812.003, as amended by Senate Bill 1176, which makes the 90-day membership waiting period permanent. Section 71.2 is also amended to delete subsection (f), thereby removing a provision that provided for the establishment of waiting period service between the 91st day of employment until contributions begin on the first day of the following month as membership service not previously established, as provided by Texas Government Code, §813.514, as amended by Senate Bill 1176. Section 813.514 was amended to remove the three-month limit on the credit purchase option for service during the membership waiting period; therefore, service earned between the 91st day of employment and the date contributions begin may be established as provided in §71.31 of this chapter.

Subsection 71.27(a) is amended to update the rules pursuant to Senate Bill 1176, which repealed Texas Government Code, §814.202(d), regarding the use of service credit in the Optional Retirement Program under TRS to meet the requirement of 10 years of service credit in ERS for a disability retirement annuity. Subsection 71.27(a) and (b) are amended to update the rules pursuant to Senate Bill 1176, which repealed Texas Government Code §814.1042, effective January 1, 2006, regarding the establishment of service with certain governmental employers. Subsection (b) is further amended to provide that service

documented with the system prior to January 1, 2006 will be considered for the sole purpose of determining eligibility to receive a service retirement only under the Rule of 80.

Section 71.31 is amended to update and clarify the rules pursuant to Texas Government Code, §813.514, as amended by Senate Bill 1176, which removed the three month restriction on the credit purchase option for service during the waiting period. Employees who do not begin state employment on the first day of a calendar month experience four months of waiting period service. This amendment will allow those affected employees to purchase the fourth month under the credit purchase option. This section is further amended to clarify that a retirement contribution must have been made as provided under §813.201 before establishing service under this section. This change is needed because a credit purchase option cost estimate cannot be made until a retirement contribution has been made to the System.

Paula A. Jones, General Counsel, has determined that for the first five years these rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering these rules, and small businesses and individuals will not be adversely affected.

Ms. Jones also determined that for each year of the first five years these rules are in effect the public benefit anticipated as a result of enforcing the rules will be updated information and clarification of the rules as they apply to the fourth month of waiting period service, the use of service credit in the Optional Retirement Program to qualify for a disability retirement annuity, and the establishment of Texas governmental service. There are no known anticipated economic costs to persons who are required to comply with these rules as proposed other than the change that will allow those affected employees to purchase the fourth month of waiting period service under the credit purchase option instead of purchasing it as service not previously established.

Comments on the proposed rules may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is 10:00 a.m. on Monday, December 12, 2005.

The amendments to Chapter 71 are proposed under the following Texas Government Code provisions: §815.102, which authorizes the board of trustees (board) to adopt rules for eligibility of membership and the administration of the funds of the retirement system; and §813.514, which authorizes the board to adopt rules to administer the credit purchase option, including rules that impose restrictions on the application of the statutes as necessary to cost-effectively administer the statute. These rules affect Title 8, Subtitle B of the Texas Government Code.

No other statutes, articles, or codes are affected by the proposed amendments.

§71.1. Service Credit for Members of Employee Class.

(a) One year of service credit shall be granted for any fiscal year prior to September 1, 1958, in which the member has six or more months of contributory service, other than military service credit, if such contributory service is established on or before December 31, 1988.

(b) Except as provided in subsection (a) of this section, each full or partial month of contributory service performed shall count as one-twelfth of a year of creditable service.

(c) Military service credit is granted on a month-for-month basis, regardless of the date performed.

(d) A member who was granted 12 months retirement credit for service performed as a legislative employee during an entire legislative session prior to December 31, 1977, who subsequently withdrew the accumulated contributions, shall, upon reinstating the withdrawn account, receive credit under subsections (a) and (b) of this section.

[~~(e) Waiting periods are considered membership service not previously established.~~]

§71.2. Membership Waiting Period for Employee Class.

(a) For an individual who begins employment or office holding on or after September 1, 2003 [~~and before September 1, 2005~~], membership in the employee class begins on the 91st day after the end of a 90 calendar day waiting period.

(b) For purposes of this section, an individual who is not considered to be a member and is subject to the 90-day waiting period includes:

(1) an individual with a break in employment or office holding for at least one full calendar month during which a contribution was not made; or

(2) an individual who has withdrawn contributions for previous service credited in the employee class.

(c) In determining the date of eligibility for membership in the employee class for an employee who is subject to the waiting period, the following provisions apply:

(1) the system shall count the date of employment as the first day of the 90-day waiting period;

(2) the date of employment means the date on which an individual begins to perform service or hold office.

(d) Contributions for membership service in the employee class begin on the first day of the calendar month following completion of the 90-day waiting period.

(e) Service credit for service performed during the 90-day waiting period described by this section may be established at the actuarial present value as provided in §71.31 of this chapter and Tex. Gov't Code §813.514.

[~~(f) Membership service from the 91st day until contributions begin the first day of the calendar month following completion of the 90-day waiting period is considered membership service not previously established and may be established as provided in §71.14.~~]

(f) [~~(g)~~] Waiting periods prior to September 1, 1973 are considered membership service not previously established and may be established as provided in §71.14.

§71.27. Certain Service Considered Solely to Establish Eligibility.

(a) Service to be considered for the sole purpose of determining eligibility to receive an annuity as provided by §814.104(c), [~~§814.202(d), or~~ §814.1042,] Texas Government Code, must be verified by an authorized official of the entity for which the service is performed.

(b) For the sole purpose of determining eligibility to receive a service retirement [~~an~~] annuity under §814.104(a)(2) [~~as provided by §814.1042~~], Texas Government Code, the retirement system may consider not more than 60 months of Texas governmental entity service that was documented with the system in accordance with §814.1042 (repealed) prior to January 1, 2006 [~~service to be considered must be performed in the employ of an agency, institution, department, or political subdivision of the State of Texas or other governmental entity created by the laws of the State of Texas~~].

§71.31. Credit Purchase Option For Certain Waiting Period Service.

(a) An eligible member may establish [~~up to three months of~~] service credit for service performed during the waiting period as authorized by §813.514, Texas Government Code, and as provided in this section. The provisions of §71.14 of this chapter do not apply to service credit established under this section.

(b) A member is eligible to establish service credit under this section if the member:

(1) holds a position in the employee class;

(2) has completed the [~~90-day~~] waiting period; [~~and~~]

(3) has made a retirement contribution in accordance with §813.201; and

(4) [~~(3)~~] makes application for the establishment of service credit and payment of the required contributions in accordance with procedures developed by ERS.

(c) An eligible member shall deposit with the system in a lump sum a contribution in the amount determined by the system to be the actuarial present value of the benefit attributable to the service credit established under this section. The tables recommended by the system's actuary and adopted by the board shall be used to determine the actuarial present value:
Figure: 34 TAC §71.31(c) (No change.)

(d) Actuarial present value shall be based on:

(1) the member's age on the date of the deposit required by this subsection;

(2) the earliest date on which the member will become eligible to retire and receive a service retirement annuity after establishing service credit under this section; and

(3) the future employment, compensation, investment and retirement benefit assumptions recommended by the system's actuary and adopted by the board.

(e) Waiting period service credit shall be established in increments of one month.

(f) This section does not apply to service credit transferred as authorized by Texas Government Code, Chapter 805.

(g) A member who withdraws contributions and cancels service credit established under this section may not reestablish such credit under §813.102, Texas Government Code, but may again establish credit only as provided by this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Paula A. Jones
General Counsel
Employees Retirement System of Texas
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34 TAC §71.21

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Employees Retirement System of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Employees Retirement System of Texas (ERS) proposes a repeal to Title 34, Chapter 71, Texas Administrative Code. The repeal of §71.21 concerns the transfer of certain state employees from the Teacher Retirement System of Texas (TRS) to ERS.

Section 71.21 is repealed to update the rules regarding the transfer of certain state employees from the TRS to ERS under a retirement incentive for the employee class pursuant to Acts of the 73rd Legislature. The repeal is needed because the provisions of the retirement incentive expired on September 1, 1995 and are no longer applicable. The sections of §71.21 that remain applicable are already contained in §71.19.

Paula A. Jones, General Counsel, has determined that for the first five years this repeal is in effect, there will be no fiscal implications for state or local government as a result, and small businesses and individuals will not be affected.

Ms. Jones also determined that for each year of the first five years this repeal is in effect, the public benefit anticipated as a result will be updated information and clarification of the rules. There are no known anticipated economic costs associated with the repeal of this rule.

Comments on the proposed repeal may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is 10:00 a.m. on Monday, December 12, 2005.

The repeal of §71.21 is proposed under Texas Government Code, §815.102, which authorizes the board of trustees (board) to adopt rules for the administration of the funds of the retirement system. This repeal affects Title 8, Subtitle B of the Texas Government Code.

No other statutes, articles, or codes are affected by the proposed repeal.

§71.21. Transfer of Certain State Employees from the Teacher Retirement System of Texas (TRS) to the Employees Retirement System of Texas (ERS).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 73. BENEFITS

34 TAC §73.19

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Employees Retirement System of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Employees Retirement System of Texas (ERS) proposes a repeal to Title 34, Chapter 73, Texas Administrative Code. The repeal of §73.19 concerns the limitation of disability claims.

Section 73.19 is repealed to update the rules and remove sections that only duplicate what is already contained in the relevant statute. The provisions of §73.19 are delineated under Texas Government Code §814.201, and an administrative rule is not needed.

Paula A. Jones, General Counsel, has determined that for the first five years this repeal is in effect there will be no fiscal implications for state or local government as a result and small businesses and individuals will not be affected.

Ms. Jones also determined that for each year of the first five years this repeal is in effect the public benefit anticipated as a result of the repeal will be updated information and removal of unnecessary rules. There are no known anticipated economic costs as a result of this repeal.

Comments on the proposed repeal may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is 10:00 a.m. on Monday, December 12, 2005.

The repeal of §73.19 is proposed under Texas Government Code §815.102, which authorizes the board of trustees to adopt rules for the administration of the funds of the retirement system. This repeal affects Title 8, Subtitle B of the Texas Government Code.

No other statutes, articles, or codes are affected by the proposed repeal.

§73.19. Limitation of Disability Claims.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Employees Retirement System of Texas
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CHAPTER 77. JUDICIAL RETIREMENT

34 TAC §§77.15, 77.21, 77.23

The Employees Retirement System of Texas (ERS) proposes a rule amendment, an amended table of factors, and a new rule under Title 34, Chapter 77, Texas Administrative Code. The amendment to §77.15 is a conforming change to correspond with the proposed new rule §77.23. An amended table of factors relating to §77.21(d), (Figure: 34 TAC §77.21(d)), is proposed to replace the existing table and will be used to determine the cost for members of the Judicial Retirement System of Texas Plan Two (JRS II) to purchase membership service credit under the credit purchase option authorized by Texas Government Code, §838.108, as amended by Senate Bill 1176, 79th Legislature, Regular Session. New rule §77.23 concerns interest on the purchase of service in excess of 20 years as established by House Bill 1114, 79th Legislature, Regular Session.

Section 77.15 is amended to reference proposed new rule §77.23 to clarify that, consistent with the existing rule, penalty interest applies only to JRS II in purchasing service in excess of 20 years.

Section 77.23 is added to clarify the purchase of service in excess of 20 years and to provide for a penalty interest rate of ten percent for those JRS II members who do not establish the service credit before the first anniversary of the date of first eligibility. This change is consistent with current rules and practice with regard to service credit not previously established and is required to cost-effectively administer the program.

An amended table of factors relating to §77.21(d) is proposed to allow a member of JRS II only to purchase additional service credit under the credit purchase option to retire or to become eligible to retire with 20 years of service by paying the System the actuarial present value of the additional benefit attributable to the additional service credit as specified in Texas Government Code §838.108(b). The table of factors represents the actuarial cost factors to purchase the additional service credit. This table replaces the existing table and is needed to comply with and conform to Senate Bill 1176, 79th Legislature, Regular Session in order for ERS to be able to administer the service purchase properly. The text of rule §77.21 is not being amended.

Paula A. Jones, General Counsel, has determined that for the first five years these rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering these rules, and small businesses and individuals will not be affected other than voluntarily incurring costs to purchase service credit.

Ms. Jones also determined that for each year of the first five years these rules are in effect the public benefit anticipated as a result of enforcing the rules will include updated information and clarification of the rules as they apply to the purchase of service credit in excess of 20 years and the credit purchase option. These rules will also benefit the public by administering the purchase of service credit on a consistent basis and that such service credit may be bought and credited in an effective and expeditious manner. There are no known anticipated economic costs to persons who are required to comply with these rules as proposed other than the penalty interest provision for service that is not purchased before the first anniversary date of first eligibility, and this provision is consistent with current practice and rules with regard to establishing service credit with the System.

Comments on the proposed rules may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is 10:00 a.m. on Monday, December 12, 2005.

The amendments to §77.15 and §77.23 are proposed under Texas Government Code §§833.1035, 835.002, 838.1035 and 840.002, which authorizes the board to adopt rules necessary for the administration of the Judicial Retirement System Plan of Texas One and Plan Two, respectively.

The table of factors is proposed under Texas Government Code, §838.108, which authorizes the board to adopt rules to administer the credit purchase option, including rules that impose restrictions on the application of the statutes as necessary to cost-effectively administer the statute; and §840.002, which authorizes

the board to adopt rules it considers necessary for the administration of the Judicial Retirement System of Texas Plan Two. These rules affect Title 8, Subtitles D & E of the Texas Government Code.

No other statutes, articles, or codes are affected by the proposed amendments.

§77.15. Payments To Establish or Reestablish Service Credit.

(a) A member or contributing member of the Judicial Retirement System of Texas Plan One or Plan Two may purchase eligible service creditable in the member's respective retirement system in accordance with the Government Code, Chapter 833 and Chapter 838, respectively. Subject to §77.23, the [~~The~~] retirement system shall grant the applicable amount of service credit after each payment made under this section is equal to the amount required to establish one or more months of creditable service.

(b) Service credit that may be established or reestablished includes military service credit, service credit previously cancelled, and service credit not previously established, and calendar year service credit.

(c) A contributing member of the Judicial Retirement System of Texas Plan One or Plan Two may file with the member's state payroll officer, a contract to establish or reestablish service credit through a monthly payroll deduction installment plan. The state agency shall provide the Employees Retirement System of Texas (ERS) a signed copy of the contract not later than the date the service purchase contribution is reported to the ERS. Plan Two members with payroll deductions that will result in less than the amount required to establish one month of creditable service by fiscal year end will be provided written notice at the time the contract is received by the ERS, that a balloon payment will be due at fiscal year end; otherwise additional penalty interest will accrue on the service cost.

(d) The contributing member shall designate the amount to be deducted from the member's salary and deposited each month with the ERS. The total amount deducted in any one fiscal year must equal or exceed the cost to establish one month of service credit. Excess payments of $5.00 or greater will be applied to the next fiscal year service purchase contract, if eligible. In the event the member does not negotiate a new contract within 60 days of a new fiscal year or there is no remaining service for purchase, any overpayment of $5.00 or greater will be refunded to the member. Any remaining credit of less than $5.00 for Plan One members will be deposited to the retirement system's state accumulation account and will not be subject to refund. Any remaining credit of less than $5.00 for Plan Two members will be deposited as penalty interest toward the last purchase established and will not be subject to refund.

(e) A member who ceases to hold a position or who withdraws authority for payroll deduction while making payments through payroll deduction may contract with the ERS for an alternative method of continuing the payment in accordance with procedures developed by the ERS.

(f) The ERS shall develop procedures and forms to be used in connection with this section.

§77.21. Purchase of Additional Service Credit.

(a) The provisions of this section apply only to the Judicial Retirement System of Texas Plan Two (JRS-II).

(b) An eligible member may establish equivalent membership service credit authorized by §838.108, Texas Government Code, as provided in this section. The provisions of §77.15 of this Chapter do not apply to service credit established under this section.

(c) A member is eligible to establish service credit under this section in the membership class in which the member holds a position if the member:

(1) has 120 months of service credit for one or more periods of time during which the member held a position as a judge and the required contributions were made;

(2) is a member of the system at the time credit is established; and

(3) is not eligible to establish other credit or service.

(d) An eligible member shall deposit with the system in a lump sum a contribution in the amount determined by the system to be the actuarial present value of the benefit attributable to the credit established under this section. The tables recommended by the system's actuary and adopted by the board shall be used by the system to determine the actuarial present value:
Figure: 34 TAC §77.21(d)
[~~Figure: 34 TAC §77.21(d)~~]

(e) Actuarial present value shall be based on:

(1) the member's age on the date of the deposit required by this subsection;

(2) the earliest date on which the member will become eligible to retire and receive a service retirement annuity after establishing credit under this section; and

(3) the future employment, compensation, investment and retirement benefit assumptions recommended by the actuaries and adopted by the board.

(f) Credit shall be established in whole year increments of credit.

(g) A member who establishes credit under this section shall certify that the member is not eligible to establish other credit or service and shall waive any and all right to establish such credit or service that the member had on the date of the deposit required by subsection (d) of this section.

(h) Credit established under this section may not be used to compute the amount of a disability retirement annuity.

(i) A member who withdraws contributions and cancels credit established under this section may not reestablish such credit under §838.102, Texas Government Code, but may again establish credit as provided in this section.

§77.23. Purchase of Service in Excess of 20 Years for Judicial Retirement System of Texas Plan Two Members.

(a) A contributing member of the Judicial Retirement System of Texas Plan Two may purchase eligible service in excess of 20 years creditable in the retirement system in accordance with Texas Government Code §838.1035.

(b) For a contributing member of the Judicial Retirement System of Texas Plan Two who does not establish the service credit before the first anniversary of the date of first eligibility to purchase service credit, interest is computed on the basis of the state fiscal year at an annual rate of 10 percent from the date of first eligibility to the date of deposit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 31, 2005.

TRD-200504946
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 867-7421

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CHAPTER 82. HEALTH SERVICES IN STATE OFFICE COMPLEXES

34 TAC §§82.1, 82.3, 82.5, 82.7 82.9

The Employees Retirement System of Texas (ERS) proposes a new Chapter 82 to Title 34 Texas Administrative Code, concerning Health Services in State Office Complexes. Chapter 82 is added pursuant to House Bill 952, 79th Texas Legislature, Regular Session, which added Chapter 671 to the Texas Government Code. Sections 82.1, 82.3, 82.5, 82.7 and 82.9 are added to define and direct the administration and operation of a licensed advance practice nurse pilot program (pilot program). These sections also comply with and conform to the provisions of Chapter 1551, Texas Insurance Code, and Chapter 671 of the Texas Government Code.

Section 82.1, concerning Definitions, adds applicable definitions necessary for the administration of the program.

Section 82.3, concerning Administration, specifies the authority of the ERS Board of Trustees (board) to administer the pilot program, and provides that the board and/or executive director shall implement and administer all aspects of the pilot program. This section provides that the board's authority includes establishment of operating procedures, hours of operation, applicable fees and co-payments, administrative costs, and all other administrative and operational functions and that the board also delegates to the executive director.

Section 82.5, concerning Eligibility, defines who is eligible to participate in the pilot program, and provides that eligibility shall be limited to employees of the state of Texas who are enrolled in the Texas Employees Group Benefits Program (GBP), pursuant to Subchapter C, Chapter 1551, Texas Insurance Code. It provides that dependents of employees and retirees are not eligible to participate in the pilot program in accordance with Texas Government Code §671.001(a).

Section 82.7, concerning Enrollment and Participation, provides that no special enrollment in the pilot program shall be required for treatment of employees, but that proof of status as an employee enrolled in the GBP shall be required for participation.

Section 82.9, concerning Termination, provides that the board shall determine if the continued provision of health services in state offices established pursuant to the pilot program is cost effective and beneficial to the participants of the GBP, and that the authority to continue or terminate such services shall be determined by the board.

Paula A. Jones, General Counsel, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and small businesses and individuals will not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be implementation of the pilot program and a determination of its cost effectiveness and benefit to GBP employees as directed by the applicable legislation. There are no known or anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed new rules may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is 10:00 a.m. on Monday, December 12, 2005.

These new rules are proposed under Texas Government Code §671.001, which provides authorization for the ERS Board of Trustees to adopt rules necessary for implementation of this program.

The proposed new rules are applicable to Chapter 671, Texas Government Code and Chapter 1551, Texas Insurance Code.

§82.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Employees Group Benefits Act, Act of the 77th Legislature, 2001, as amended, Insurance Code, Chapter 1551.

(2) Board--The board of trustees of the Employees Retirement System of Texas.

(3) Employee--A person authorized by the Act to participate in the program as an employee.

(4) Executive Director--The executive director of the Employees Retirement System of Texas.

(5) GBP--The Texas Employees Group Benefits Program as established by the board pursuant to the Act and known as the Group Benefits Program.

(6) Nurse Practitioner--A licensed advanced practice nurse as defined by §301.152, Occupations Code.

(7) Pilot Program--The program authorized under House Bill 952, 79th Texas Legislature, Regular Session, and codified at Chapter 671, Texas Government Code, wherein the viability of an on-site nurse practitioner to provide authorized on-site health services for state employees is to be evaluated.

(8) Supervising Physician--A licensed physician who will perform supervisory functions as described by §157.052(e), Occupations Code, for the nurse practitioner.

§82.3. Administration.

The board shall implement and administer all aspects of the pilot program and determine any future expansion or continuation of the pilot program as authorized by Chapter 671, Texas Government Code. This includes the authority to execute contracts as necessary, to establish operating procedures, hours of operation, applicable fees and co-payments, administrative costs, and all other administrative and operational functions for the pilot program. The executive director is vested with the authority to implement and make all administrative decisions related to the pilot program that are vested in the board, subject to the basic and general policies, rules and regulations and appellate jurisdiction of the board.

§82.5. Eligibility.

Eligibility for participation in the pilot program shall be limited to employees of the state of Texas who are enrolled in the GBP, pursuant to Subchapter C, Chapter 1551, Insurance Code. Retirees and their dependents and dependents of employees are not eligible for participation.

§82.7. Enrollment and Participation.

No special enrollment shall be required for treatment of employees. Proof of status as an employee currently enrolled in the GBP shall be required for participation.

§82.9. Termination.

The board shall determine if the continued operation of any facility established under the pilot program is cost effective and beneficial to the participants of the GBP. The authority to continue or terminate a facility shall be determined by the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 31, 2005.

TRD-200504949
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 867-7421

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CHAPTER 87. DEFERRED COMPENSATION

34 TAC §§87.1, 87.3, 87.5, 87.17, 87.33

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Admininistrative Code, §§87.1, 87.3, 87.5, 87.17, and 87.33, concerning the Deferred Compensation Plan.

Sections 87.1, 87.3, 87.5, 87.17, and 87.33 are amended to update the plan rules, to clarify plan requirements, and to comply with and conform to state and federal law and administrative requirements.

Section 87.1, concerning Definitions, adds and revises certain definitions due to changes in state law. State law changed in 2005 to allow community colleges and junior colleges to participate in the Texa$aver 457 Plan.

Sections 87.3, 87.5 and 87.33, concerning Administrative and Miscellaneous Provisions, Participation by Employees, and The Economic Growth and Tax Relief and Reconciliation Act, are amended to adjust the annual deferral limit to $15,000 for 2006, per federal law.

Section 87.5(h)(9) adjusts the over age 50 catch-up limits to $5,000 for 2006, per federal law. Other changes in §87.5 include amendments to post severance compensation now allowed by Internal Revenue Code (IRC) Section 415 regulations, and defines the conditions under which this compensation can be deferred.

Section 87.17, concerning Distributions, includes amendments resulting from IRC Section 415 regulations and also amendments to the loan section. Section 87.17 also includes a clarification regarding the IRC Section 402(f) safe harbor notice, and provides that the notice may be delivered electronically or in writing.

Section 87.33, concerning The Economic Growth and Tax Relief and Reconciliation Act, includes a clarification regarding the delivery of the IRC Section 402(f) safe harbor notice.

Ms. Paula A. Jones, General Counsel, Employees Retirement System of Texas, has determined that for the first five year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules and small businesses should not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be added flexibility for and protection of State of Texas Deferred Compensation Plan participants. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is 10:00 a.m. on Monday, December 12, 2005.

These amendments are proposed under Government Code, §609.508, which provides authorization for the ERS Board of Trustees to adopt rules necessary to administer the deferred compensation plan.

No other statutes are affected by these proposed amendments.

§87.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (16) (No change.)

(17) Enrollment form--formerly known as participation agreement. A contract signed by an employee agreeing to defer the receipt of part of the employee's compensation in accordance with the plan and containing certain information regarding prior plan vendors, investment products, and other matters.

(18) [~~(17)~~] Emergency withdrawal application--A form completed by a participant requesting the full or partial distribution of the participant's deferrals and investment income because of a unforeseeable emergency.

(19) [~~(18)~~] Employee--A person who provides services as an officer or employee to a state agency.

(20) [~~(19)~~] Executive director--The executive director of the Employees Retirement System of Texas.

(21) [~~(20)~~] FDIC--The Federal Deposit Insurance Corporation or its successor in function. The FDIC consists of two funds, the Savings Association Insurance Fund (SAIF), which insured savings associations and savings banks, and the Bank Insurance Fund (BIF), which insures commercial banks.

(22) [~~(21)~~] Fee--The term includes a fee, penalty, charge, assessment, market value adjustment, forfeiture, or service charge.

(23) [~~(22)~~] Gross income--The total of:

(A) the value of salary or wages;

(B) plus the value of longevity pay, hazardous duty pay, imputed income, special duty pay, sick, vacation, back pay and benefit replacement pay; and

(C) minus the present value of contributions to the Employees Retirement System, the Teacher Retirement System, the Optional Retirement Program, and the TexFlex program administered by the Employees Retirement System.

(24) [~~(23)~~] Home office--The primary location at which a prior plan vendor maintains its files and other records concerning the vendor's participation in the plan and the participants whose deferrals and investment income have been invested in the vendor's qualified investment products. The term is usually equivalent to the vendor's headquarters.

(25) [~~(24)~~] Inactive prior plan vendor--A prior plan vendor is an inactive prior plan vendor if no new deferrals have been invested in any of the vendor's qualified investment products for 12 consecutive months.

(26) [~~(25)~~] Includible compensation--An employee's actual wages in box 1 of Form W-2 for a year for services and compensation from a state agency that is includible in a participant's gross income under §401(a)(17) of the Code and increased (up to the dollar maximum) by any compensation reduction election under §125, §132(f), §401(k), §403(b) or §457(b) of the Code.

(27) [~~(26)~~] Investment income--The interest, capital gains, and other income earned through the investment of deferrals in qualified investment products.

(28) [~~(27)~~] Investment product--The term includes a life insurance product, fixed or variable rate annuity, stable value account, mutual fund, certificate of deposit, money market account, self-directed brokerage account, or passbook savings account. An investment product that is in any respect different from another investment product of the same vendor is a different investment product.

(29) [~~(28)~~] Investment provider--a prior plan vendor or revised plan vendor that offers an investment product in the plan.

(30) [~~(29)~~] NCUA--National Credit Union Administration, a United States Government Agency, which regulates, charters and insures deposits of the nation's federal credit unions. Shares and deposits in credit unions are insured by the NCUSIF as detailed in this section.

(31) [~~(30)~~] NCUSIF--National Credit Union Share Insurance Fund, is administered by the NCUA as detailed in this section and insures members' share and deposit accounts at federally insured credit unions.

(32) [~~(31)~~] Non-filer--A prior plan vendor which does not ensure that the plan administrator receives a quarterly report by the due date specified in §87.19(d)(1) of this title (relating to reporting and recordkeeping by prior plan vendors).

(33) [~~(32)~~] Non-spousal beneficiary--Any beneficiary other than a spouse or ex-spouse.

(34) [~~(33)~~] Normal retirement age--A range of ages beginning with the earliest age at which a person is eligible to retire under the participant's basic pension plan as referenced in §87.5(g) of this title (relating to participation by employees).

(35) [~~(34)~~] One-time election form--A form completed by a participant requesting the full distribution of deferred compensation funds with a total balance that does not exceed the dollar limit under the Code §457(e)(9), EGTRRA, or the dollar limit under §411(a)(11) of the Code, if greater, as of the date that payments commence. Also known as the de minimis distribution election.

(36) [~~(35)~~] Participant--A current, retired, or former employee who either has elected to defer a portion of the employee's current compensation, previously deferred compensation or has a balance in the plan.

(37) [~~(36)~~] Participation agreement--A contract signed by an employee agreeing to defer the receipt of part of the employee's compensation in accordance with the plan and containing certain information regarding prior plan vendors, investment products, and other matters.

(38) [~~(37)~~] Plan--The deferred compensation program of the state [~~State~~] of Texas that is governed by the Code §457 and authorized by Chapter 609, Government Code. This plan is a continuation of the plan previously administered by the Comptroller of Public Accounts.

(39) [~~(38)~~] Plan administrator--The Board of Trustees of the Employees Retirement System of Texas or its designee.

(40) [~~(39)~~] Prior plan--Refers to the State of Texas 457 Deferred Compensation Plan, the vendors and products approved by the Board of Trustees of the Employees Retirement System of Texas prior to September 1, 2000.

(41) [~~(40)~~] Prior plan vendor--A vendor in the prior plan with whom the plan administrator has signed a vendor contract. The term includes a prior plan vendor's officers and employees. The prior plan vendor may be an insurance company, bank, savings and loan, credit union, or mutual fund. The term applies only to vendors approved and implemented by the Board of Trustees before January 1, 2000.

(42) [~~(41)~~] Product approval notice--A written notice from the plan administrator to a prior plan vendor informing the vendor that a particular investment product has been approved for participation in the plan.

(43) [~~(42)~~] Product contract--A contract between an investment provider and the plan administrator concerning the participation of one of the vendor's investment products in the plan.

(44) [~~(43)~~] Product type--A categorization of an investment product according to its relevant characteristics. Examples of product types are life insurance products, mutual funds, certificates of deposit, savings accounts, share accounts, stable value account, self-directed brokerage account, and annuities.

(45) [~~(44)~~] Qualified investment product--An investment product concerning which the plan administrator and the sponsoring prior plan or revised plan vendor have signed a product contract.

(46) [~~(45)~~] Revised plan--Refers to the State of Texas 457 Deferred Compensation Plan and the vendors and products approved by the Board of Trustees of the Employees Retirement System of Texas after August 31, 2000 for the Texa$aver program. The term "Texa$aver program" is used as it is defined in Texas Government Code Section 609.502.

(47) [~~(46)~~] Revised plan vendor--An insurance company, brokerage firm, or mutual fund distributor that sells investment products in the revised plan. The term includes a vendor's officers and/or employees. This applies only to vendors approved and implemented by the Board of Trustees subsequent to December 31, 1999.

(48) [~~(47)~~] Separation from service--A termination of the employment relationship between a participant and the participant's employing state agency, as determined in accordance with the agency's established practice. The term excludes a paid or unpaid leave of absence.

(49) [~~(48)~~] Spousal beneficiary--The current or ex-spouse of a participant who is designated to receive a participant's account balance.

(50) [~~(49)~~] State agency--A board, commission, office, department, or agency in the executive, judicial, or legislative branch of state government. The term includes an institution of higher education as defined by the Education Code, §61.003[~~, other than a public junior college~~].

(51) [~~(50)~~] Third Party Administrator (TPA)--An entity under the direction of the plan administrator that operates independently of both the employer and investment providers to perform agreed upon administrative services to a tax-deferred defined contribution plan. These tasks may include recordkeeping, preparation of participant statements, monitoring deferral limits, and other specified services.

(52) [~~(51)~~] Transfer--The redemption of deferrals and investment income from a qualified investment product for investment in another qualified investment product.

(53) [~~(52)~~] Trust--The deferred compensation trust fund established to hold and invest deferrals and investment income under the plan for the exclusive benefit of participants and their beneficiaries.

(54) [~~(53)~~] Trustee--The Board of Trustees of the Employees Retirement System of Texas.

(55) [~~(54)~~] Unforeseeable emergency distribution--A severe financial hardship of the participant resulting from: an illness or accident, loss of property due to casualty, funeral expenses or other extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

(56) [~~(55)~~] Valuation date--A point in time in which an asset is assigned a dollar value. It may be the designated time of closing (daily, last day of the calendar month, the last day of the calendar quarter, each December 31) for determination of account balances in a defined contribution plan.

(57) [~~(56)~~] Vendor contract--A contract between the plan administrator and an investment provider concerning the vendor's participation in the plan.

(58) [~~(57)~~] Vendor representative--An agent, independent agent, independent contractor, or other representative of a prior plan who is not an employee or officer of the vendor.

(59) [~~(58)~~] 401(a)(9), §401(a)(9) and Section 401(a)(9)--These terms refer to Internal Revenue Code §401(a)(9).

(60) [~~(59)~~] 457, §457 and Section 457--These terms refer to Internal Revenue Code §457.

§87.3. Administrative and Miscellaneous Provisions.

(a) (No change.)

(b) Participation by state agencies in the plan.

(1) - (2) (No change.)

(3) Agency coordinators. An agency coordinator's responsibilities may include:

(A) - (D) (No change.)

(E) monitoring the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of $15,000 [~~$14,000~~] (as adjusted) or 100% of the participant's gross income is not exceeded;

(F) - (P) (No change.)

(c) Miscellaneous provisions.

(1) - (4) (No change.)

(5) The participation of an employee in the plan does not give the employee a legal or equitable right against the participant's employing state agency, the plan administrator, or the state [~~State~~] of Texas except as provided in the sections in this chapter. The plan does not affect the terms of employment between a participant and the participant's employing state agency.

(6) If a time limit is expressed in terms of a number of days and the last day of the time limit falls on a weekend or holiday recognized by the state [~~State~~] of Texas for observance by state employees, the last day of the time period is the first business day after the weekend or holiday.

(7) - (8) (No change.)

§87.5. Participation by Employees.

(a) - (c) (No change.)

(d) Eligibility. Employees are eligible to participate in the plan and defer compensation immediately upon becoming employed by a state agency. Employees of community colleges and junior colleges are eligible only if such community college or junior college has opted to participate in the Texa$aver 457 plan.

(e) (No change.)

(f) Participants with existing life insurance products.

(1) This paragraph is effective until December 31, 1998. When a participant has deferrals and investment income in a life insurance product, the state [~~State~~] of Texas:

(A) - (D) (No change.)

(2) (No change.)

(g) Normal maximum amount of deferrals.

(1) (No change.)

(2) The normal maximum amount of deferrals is equal to the lesser of $15,000 [~~$14,000~~] (as periodically adjusted for cost-of-living in accordance with Code §457(e)(15)), §415(d), and the Job Creation and Worker Assistance Act of 2002, or 100% of a participant's includible compensation.

(3) The participant's employing agency will monitor the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of $15,000 [~~$14,000~~] (as adjusted) or 100% of a participant's gross income is not exceeded. Each participant enrolling in the plan must provide the employing state agency any information necessary to ensure compliance with plan requirements, including, without limitation, whether the employee is a participant in any other eligible plan. If a participant makes deferrals in excess of the normal maximum annual deferral limit and is not participating under the catch-up provision, the following actions will be taken: [~~.~~]

(A) Upon notification by the participant's agency, the prior plan vendor or TPA will return to the participant's agency the amount of deferrals in excess of the normal plan limits, that is, the lesser of $15,000 [~~$14,000~~] (as adjusted) or 100% of the participant's gross income without any reduction for fees or other charges.

(B) (No change.)

(4) - (5) (No change.)

(h) Three-year catch-up exception to the normal maximum amount of deferrals.

(1) - (7) (No change.)

(8) If a participant makes deferrals in excess of the normal plan limits under the three-year catch-up provision during or after the calendar year in which the participant reaches normal retirement age, the following actions will be taken.

(A) Upon notification by the participant's state agency, the prior plan vendor or TPA will return to the participant's state agency, the amount of deferrals in excess of the normal plan limits, that is, the lesser of $15,000 [~~$14,000~~] (as adjusted in accordance with Code §457(e)(15) or 100% of a participant's includible compensation) without any reduction for fees or other charges.

(B) (No change.)

(9) Over age 50 catch-up. A participant age 50 or older during any calendar year shall be eligible to make additional pre-tax contributions in accordance with Code §414(v) applicable to 457 plans, in excess of normal deferral amounts. A participant may make an additional contribution over and above the applicable deferral limit. The additional contribution is $5,000 for 2006 [~~$4,000 for 2005, increasing by $1,000 each year up to $5,000 in 2006~~]. After 2006, the amount of the "Over age 50 and over catch-up" will be indexed in $500 increments based upon cost-of-living adjustments. A participant who elects to defer contributions under the normal three-year catch-up provisions may not also defer under the special Over age 50 catch-up and Code §414(v) and §457.

(10) Special post severance compensation under Code §415 effective January 1, 2007. A participant may elect to defer compensation paid within 2 1/2 months following separation from service in accordance with Code §415. Types of compensation include:

(A) accumulated bona fide sick pay, vacation pay, back pay or other leave, but only if the participant would have been able to use the leave if employment had continued;

(B) payments for commissions, bonuses, overtime and shift differential pay, but only if these would have been paid and are regular compensation for services rendered;

(C) compensation paid to participants who are permanently and totally disabled; and

(D) compensation relating to qualified military service (Reg. 1.457-4(d)(1).

(i) - (o) (No change.)

(p) Ownership of deferrals and investment income.

(1) Until December 31, 1998, a participant's deferrals and investment income are the property of the state [~~State~~] of Texas until the deferrals and investment income are actually distributed to the employee.

(2) Effective January 1, 1999, in accordance with Chapter 609, Texas Government Code and Code §457(g), all amounts currently and hereafter held under the plan, including deferrals and investment income, shall be held in trust by the Board of Trustees for the exclusive benefit of participants and their beneficiaries and may not be used for or diverted to any other purpose, except to defray the reasonable expenses of administering the plan. In its sole discretion, the Board of Trustees may cause plan assets to be held in one or more custodial accounts or annuity contracts that meet the requirements of Code §457(g), and §401(f). In addition, effective January 1, 1999, the Board of Trustees does hereby irrevocably renounce, on behalf of the state [~~State~~] of Texas and participating state agencies, any claim or right which it may have retained to use amounts held under the plan for its own benefit or for the benefit of its creditors and does hereby irrevocably transfer and assign all plan assets under its control to the Board of Trustees in its capacity as the trustee of the trust created hereunder. It shall be impossible, prior to the satisfaction of all liabilities with respect to participants and their beneficiaries, for any part of the assets and income of the trust fund to be used for, or diverted to, purposes other than for the exclusive benefit of participants and their beneficiaries. Adoption of this rule shall constitute notice to prior plan vendors holding assets under the plan to change their records effective January 1, 1999, to reflect that assets are held in trust by the Board of Trustees for the exclusive benefit of the participants and beneficiaries. Failure of a vendor to change its records on a timely basis may result in the expulsion of the vendor from the plan.

(q) - (r) (No change.)

§87.17. Distributions.

(a) In general. Upon request, the plan administrator shall authorize the distribution of a participant's deferrals and investment income in accordance with the applicable distribution agreement so long as:

(1) - (2) (No change.)

(3) the participant's employment with the state[~~State~~] of Texas has terminated other than through death;

(4) - (6) (No change.)

(b) - (c) (No change.)

(d) Commencement of distributions. Notwithstanding anything in a distribution agreement:

(1) the earliest a participant or beneficiary may begin receiving a distribution is the 51st day after the occurrence that entitles the participant or beneficiary to the distribution, except this paragraph does not apply to [~~a lump sum,~~] an emergency withdrawal or a one-time election distribution; and

~~[(2) if the participant's age is less than age 70, the distribution period is 27.4 years plus the number of years that the participant's age is less than age 70, and can be made in monthly, quarterly or annual installments based on the account balance as of the end of the year prior to the year for which the distribution is being calculated; and]~~

(2) [~~(3)~~] A participant must begin receiving a distribution by the later of:

(A) April 1st of the year following the calendar year in which the participant attains age 70.5; or

(B) April 1st of the year following the year in which the participant retires or otherwise has a separation from employment.

(e) Filing of distribution agreements by participants.

(1) This subsection applies when a participant becomes entitled to a distribution because:

(A) (No change.)

(B) the participant's employment with the state [~~State~~] of Texas has terminated other than through death.

(2) - (6) (No change.)

(7) Upon receipt of a certified copy of a qualified domestic relations order, a certified copy of a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, alternate payee, or other dependent of a participant, and same is made pursuant to the domestic

relations law of any state, then the amount of the participant's account balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the participant is eligible for a distribution of benefits under the plan. The plan administrator or TPA shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. (§414(p) of the Code and §1.457-10(c) of the Income Tax Regulations)

(8) (No change.)

(f) - (g) (No change.)

(h) Amendments of distribution agreements.

(1) - (5) (No change.)

(6) Procedures for amending a distribution agreement.

(A) A participant or beneficiary who wants to amend the participant's distribution agreement must file an amended distribution agreement with the plan administrator. [~~The amended distribution agreement must contain the word "Amended" at the top of the agreement.~~]

(B) - (D) (No change.)

(7) (No change.)

(i) - (o) (No change.)

(p) Distributions to minors and incompetents.

(1) (No change.)

(2) If the conditions of the preceding paragraph are satisfied, the plan administrator shall make the distribution payable to the guardian of the participant or beneficiary. Such payments shall be considered a payment to such participant or beneficiary, and shall, to the extent made, be deemed a complete discharge of any liability of the Plan, state [~~State~~] of Texas, plan administrator and TPA for all payments required under the plan.

(3) If no guardian has been appointed and after having obtained a proper release, the plan administrator shall make the distribution payable to:

(A) (No change.)

(B) the custodian of the participant or beneficiary under the Texas Uniform Gifts to Minors Act (Texas Property Code, §141.002 et seq.) if the participant or beneficiary resides in the state [~~State~~] of Texas;

(C) the custodian of the participant or beneficiary under a law similar to the Texas Uniform Gifts to Minors Act if the participant or beneficiary resides outside the state [~~State~~] of Texas; or

(D) (No change.)

(q) - (r) (No change.)

(s) Loans to participants. The plan administrator is authorized to implement procedures to establish a loan program for the revised plan in compliance with Code §72(p)(2). Plan loans shall be permitted only from assets deposited in the revised plan. Participants with account balances in the prior plan must transfer those balances to the revised plan in order to qualify for a plan loan. The security of the loan is a pledge or non-refundable application fee of $50 per loan. General loans are processed without any pre-loan paperwork. A participant's execution on the loan check authorizes the plan administrator to make payroll deductions from the participant's compensation (Code §1.401(a)-21(d)). The loan balance may be prepaid at any time without penalty. The maximum number of active loans available to any participant at any given time is two (2) per plan.

(1) - (5) (No change.)

(6) In the event that a participant fails to make any loan payment by the last day of the calendar quarter following the calendar quarter [~~within 90 days after the date~~] such payment is due, a default on the loan shall occur. In the event of such default, all remaining payments on the loan shall be immediately due and payable the day following the date on which such payment was due [~~, effective as of the first day of the calendar month following the month in which a default occurs~~]. In the case of any loan default, the plan administrator shall apply the portion of the participant's interest in the plan held as security for the loan in satisfaction of the loan on the date of severance from employment. In addition, the plan administrator shall take any legal action it shall consider necessary or appropriate to enforce collection of the unpaid loan, and the costs of any legal proceeding or collection including, but not limited to the plan administrator's and TPA's reasonable attorneys fees, costs and prejudgment and postjudgment interest, shall be charged to the account balance of the participant. Any defaulted loans incurred will continue to accrue interest and will reduce the number of available loans. Amounts borrowed through the loan program are not taxable distributions and are not subject to federal income taxes, unless the participant defaults on the loan. [~~Loans are considered in default if no payments have been made for 90 days, or general loans are not paid off within five (5) years.~~] If a participant retires or separates from employment, payroll deductions will stop and the loan is immediately due and payable in full. If the loan is not paid prior to the last day of the calendar quarter following the calendar quarter in which the payment was due, then the entire [~~within the 90 day period, the~~] outstanding balance, pursuant to IRS regulations, will be considered a distribution, and the plan administrator shall report the loan to the IRS as a taxable distribution for [~~in~~] the year that the loan defaults. Participants may make manual payments to pay off the loan after separating from employment. The new default procedures are effective January 1, 2006. In the event a loan is outstanding or in default or both hereunder on the date of a participant's death, the participant's estate shall be the beneficiary as to the portion of participant's interest in the plan invested in such loan.

(7) In accordance with Code §72 (p) and associated Treasury Regulations at §1.72(p)-1, the Plans will suspend payments for up to twelve (12) months for non-military leaves of absence if the participant is on a bona fide leave of absence and the leave is either without pay, or the participant's after-tax pay is less than the installment payment amount under the terms of the loan. When payments resume, installment payments may not be less than the amount required under the terms of the original loan. In no event may the term of the loan be extended beyond its original due date[~~; accept upon express approval of the hardship committee~~]. Therefore, the participant must seek a revised amortization schedule and pay higher monthly payments or continue the original payment schedule and make one or more additional payments before the end of the loan term in sufficient amounts to pay the loan in full when due.

(8) As a condition of the loan, a participant shall be required to enter into an irrevocable agreement authorizing the employer to make payroll deductions from his or her compensation as long as the participant is an employee and to transfer such payroll deduction to the Trustee or TPA in payment of such loan plus interest. Repayments of a loan shall be made by payroll deduction of equal amounts (comprised of both principal and interest) from pay [~~each paycheck~~], with the first such deduction to be made as soon as practicable after the loan funds are disbursed; provided, however:

(A) - (B) (No change.)

(t) Federal withholding and reporting requirements.

(1) (No change.)

(2) A prior plan vendor or TPA shall file an application for authorization to act as agent of the state [~~State~~] of Texas, or effective January 1, 1999, the plan, with the District Director of the Internal Revenue Service Center where the prior plan vendor or TPA files its returns. The application shall include Form 2678 - Employer Appointment of Agent under §3504 of the Code, which shall be supplied by the plan administrator, and shall be completed and filed in accordance with the instructions set forth in Internal Revenue Service Publication 1271. The prior plan vendor shall promptly furnish to the plan administrator a copy of such vendor's letter of authorization from the Internal Revenue Service approving the appointment of the prior plan vendor as agent.

(3) When reporting to the Internal Revenue Service, the prior plan vendor and TPA shall use the vendor's Federal Employer Identification Number and shall comply with all requirements of Revenue Procedure 70-6 as set out in Internal Revenue Service Publication 1271 and as subsequently amplified or superseded by subsequent Revenue Procedures. A prior plan vendor may not use the federal employer identification number of the plan, plan administrator, TPA, or the state [~~State~~] of Texas. Regardless of how many qualified investment products a prior plan vendor sponsors, the vendor must use the same federal employer identification number for all reports to the Internal Revenue Service.

(4) Federal tax withholding is mandatory for certain distributions to participants. Distributions with a periodic payout of less than 10 years and lump sum distributions, other than required minimum distributions, are "eligible rollover distributions" subject to a mandatory 20 percent federal income tax withholding unless distributed in a direct rollover to an eligible retirement plan. Vendors who maintain participant account balances in the prior plan shall provide the required IRC §402(f) safe harbor notice to all 457 plan participants or their beneficiaries prior to the payment of an eligible rollover distribution. Tax notices may be provided electronically or in writing to the participant. For all distributions other than eligible rollover distributions, a [~~A~~] prior plan vendor or TPA shall accurately determine any amounts to be withheld for federal taxes based on a Form W-4P submitted by the participant at the time of a distribution. [~~Distributions with a periodic payout of less than 10 years or a lump sum distribution are subject to a mandatory 20% federal income tax withholding.~~] If no Form W-4P is provided, the participant shall be taxed as "single with no dependents." [~~Vendors who maintain participant account balances in the prior plan shall provide the required IRC §402(f) safe harbor notice to all 457 plan participants or their beneficiaries prior to the payment of an eligible rollover distribution.~~] The Tax Equity and Fiscal Responsibility Act does not apply to a deferred compensation plan governed by the Code §457.

(5) Total death benefits, including life insurance proceeds, are taxable as ordinary income to the beneficiary and must be reported on a Form 1099-R in accordance with subsection [~~paragraph~~] (m) of this section [~~subsection~~].

(6) (No change.)

(u) (No change.)

§87.33. The Economic Growth and Tax Relief and Reconciliation Act.

(a) - (f) (No change.)

(g) Distributions.

(1) - (2) (No change.)

(3) The TPA and prior plan vendors who maintain participant account balances in the prior plan shall provide the required Code §402(f) safe harbor notice to all 457 plan participants or their beneficiaries prior to the payment of an eligible rollover distribution. Tax notices may be provided electronically or in writing to a participant in the revised plan.

(h) - (i) (No change.)

(j) The normal maximum amount of deferrals is increased to the lesser of $15,000 [~~$14,000~~] (as periodically adjusted in accordance with Code §457(e)(15)) or 100% of a participant's includible compensation.

(k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 31, 2005.

TRD-200504947
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 867-7421

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 720. 24-HOUR CARE LICENSING
SUBCHAPTER O. GENERAL POLICIES AND PROCEDURES

40 TAC §§720.1003, 720.1007, 720.1012

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§720.1003, 720.1007, and 720.1012, concerning required behavior intervention policies and procedures, personal restraint, and behavior intervention training, in its 24-Hour Care Licensing chapter. The purpose of the amendments is to revise policies concerning the use of restraint and seclusion in certain facilities, as required by Senate Bill 325 of the 79th Legislature, Regular Session.

The amendment to §720.1003 adds a requirement that the behavior intervention policies of the facility must be shared with the parent or managing conservator at the time of admission and prohibits a child-care facility and/or child-placing agency from discharging or retaliating against (1) a person who presents information relating to the misuse of restraint or seclusion at the facility; or (2) a client or resident of the facility because someone on behalf of this person presents information relating to the misuse of restraint or seclusion at the facility.

The amendment to §720.1007: (1) permits a prone or supine hold to only be used as a transitional hold; (2) clarifies the appropriate action to take when a child indicates that he cannot breathe; (3) prohibits personal restraints that put pressure on a child's torso, obstruct a child's breathing, and interfere with a

child's ability to communicate; (4) specifies when a person qualified in behavior intervention can use a prone or supine hold; (5) clarifies the maximum time limits for other personal restraints; and (6) adds that documentation of personal restraint must include when a prone or supine restraint is used.

The amendment to §720.1012 adds that the risks associated with the use of prone or supine holds must be included as a pre-service training component.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the protection of children will be enhanced and the quality of care of children will improve. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Amy Chandler at (512) 438-3134 in DFPS's Licensing Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-337, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

The amendments are proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; HRC §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs; HRC §42.002, which gives DFPS primary responsibility for regulating child-care operations; and HRC §42.042, which authorizes DFPS to promulgate minimum standards.

The amendments implement the Health and Safety Code, Chapter 322, as amended and added by Senate Bill 6, 79th Legislature, Regular Session.

§720.1003. Required Behavior Intervention Policies and Procedures.

(a) - (d) (No change.)

(e) The facility must notify the [~~Texas~~] Department of Family and Protective [~~and Regulatory~~] Services of any changes to these policies and procedures before implementation of the changes.

(f) (No change.)

(g) The child-care facility must post the behavior interventions allowed in the child-care facility in a place where the children/clients can view them, and [~~or~~] at admission, must provide the [~~each child and~~] parent(s) or managing conservator with a personal copy of the facility's behavior interventions policies [~~allowed in the facility~~].

(h) - (i) (No change.)

(j) A child-care facility and/or child-placing agency may not discharge or otherwise retaliate against:

(1) An employee, client, resident, or other person because the employee, client, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(2) A client or resident of the facility because someone on behalf of the client or resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

§720.1007. Personal Restraint.

(a) - (b) (No change.)

(c) Implementation of personal restraint.

(1) (No change.)

(2) Personal restraint must be initiated in a way that minimizes the risk of physical discomfort, harm, or pain to the child. Only the minimal amount of reasonable and necessary physical force may be used to implement personal restraint. During any personal restraint, a caregiver qualified in behavior intervention must monitor the child's breathing and other signs of physical distress and take appropriate action to ensure adequate respiration, circulation, and overall well-being. The caregiver monitoring the child should not be the same caregiver that is restraining the child. Appropriate action includes responding prudently to a potentially life-threatening situation when a child indicates he cannot breathe. Any personal restraint that employs a technique listed in subparagraphs (A) - (D) of this paragraph is prohibited:

(A) restraints that impair the child's breathing by putting [~~place a child face-down and place~~] pressure on the child's torso [~~back~~];

(B) restraints that obstruct the child's airway, including a procedure that places anything in, on, or over the child's mouth, nose, or neck [~~airways of the child or impair the breathing of the child~~];

(C) (No change.)

(D) restraints that interfere with [~~restrict~~] the child's ability to communicate.

(3) A person qualified in behavior intervention:

(A) May use a prone or supine hold on a child in care only:

(i) As a transitional hold that lasts no longer than one minute;

(ii) As a last resort when other less restrictive interventions have proven to be ineffective; and

(iii) When an observer who is not continuously involved in the restraint ensures the child's breathing is not impaired. The observer must be trained in the risks associated with the use of prone and supine restraints, including positional, compression, or restraint asphyxia. Child-care facilities with a capacity of 50 or fewer children, including foster and foster group homes, are exempt from meeting this observation requirement.

(B) May use other types of personal restraint techniques permitted by facility policy:

(i) For a maximum time of one hour for [~~For~~] children and adolescents ages 9 to 17 years [~~, maximum time in personal restraint must not exceed one hour~~].

(ii) For a maximum time of 30 minutes for children under age nine years [~~, a personal restraint must not exceed 30 minutes~~].

(4) - (10) (No change.)

(d) (No change.)

(e) Documentation of personal restraint. The use of personal restraint must be documented as soon as possible and no later than 24 hours after the initiation of the restraint. Documentation must include:

(1) - (5) (No change.)

(6) the specific restraint techniques used, including a prone or supine restraint used as a transitional hold;

(7) - (12) (No change.)

§720.1012. Behavior Intervention Training.

(a) (No change.)

(b) Pre-service training.

(1) (No change.)

(2) New caregivers who already meet both of the requirements set out in subparagraphs (A) and (B) of this paragraph are not required to complete the required pre-service training. These qualifications must be documented in the caregiver's record. The new caregiver has:

(A) been employed in a residential child-care [~~child care~~] setting within the previous year; and

(B) (No change.)

(3) - (5) (No change.)

(6) Facilities whose policies do not allow for the use of any type of restraint or seclusion, including personal restraint, must require a pre-service training that meets the curriculum requirements in subparagraphs (A) - (H) [~~(A) - (G)~~] of this paragraph. Facilities whose policies allow for the use of any one type of restraint or seclusion must require pre-service training that meets all of the curriculum requirements listed in this paragraph and require that at least three quarters of the pre-service training focus on early identification of potential problem behaviors and strategies and techniques of less restrictive interventions. The training components are:

(A) - (F) (No change.)

(G) less restrictive strategies caregivers can use to work with oppositional children; [~~and~~]

(H) the risks associated with the use of prone and supine restraints, including positional, compression, or restraint asphyxia; and

(I) [~~(H)~~] strategies for re-integration of children into the milieu after restraint or seclusion.

(7) - (10) (No change.)

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504895
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 438-3437

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CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.37, 745.129, and 745.8407; and new §§745.4201, 745.4203, 745.4205, 745.8421, and 745.8423, concerning what specific types of operations does Licensing regulate, what miscellaneous programs are exempt from Licensing regulation, when will Licensing inspect and/or investigate an operation, may I take possession of a child from a law enforcement or juvenile probation officer, how does a child-placing agency become authorized to take possession of a child from a law enforcement or juvenile probation officer, what must I do when I take possession of a child from a law enforcement or juvenile probation officer, will anonymous reports received by the Department be investigated, and will the findings of an anonymous report be posted on the Department's Internet website, Search Texas Child Care, in its Licensing chapter. The amendments and new sections are clarifications or the result of legislation passed by the 79th Legislature, Regular Session, 2005.

The amendment to §745.37 adds the word "regular" to the definition of registered child-care home to clarify that the care must be regular for a child day care home to be subject to regulation. Also, the minimum age for admission into a therapeutic camp is updated to 13 to correspond with §720.553.

The amendment to §745.129, paragraph (4) is a new exemption created as a result of the Child Protective Services Relative and Other Designated Caregiver Program.

New §§745.4201, 745.4203, and 745.4205 address operations taking a child into care from law enforcement. Section 745.4201 states that only licensed emergency shelters, and licensed child-placing agencies authorized by Licensing may take possession of a child from law enforcement. Section 745.4203 states the child-placing agency must be authorized by DFPS to take possession of a child from law enforcement. Section 745.4205 states the child-care operation must immediately notify DFPS when taking possession of a child, with the help of law enforcement complete a form with the appropriate information, and provide the completed form to the investigator who responds to the call.

The amendment to §745.8407 allows DFPS to conduct random sampling to monitor agency foster homes and foster group homes.

New §745.8421 limits the number of anonymous complaints investigated by DFPS, and new §745.8423 states DFPS will not post the results of anonymous complaints that have no factual basis on DFPS's website.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in

effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the protection of children will be enhanced and the quality of care of children will improve. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Amy Chandler at (512) 438-3134 in DFPS's Licensing Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-337, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendments and new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

40 TAC §745.37

The amendment is proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; HRC §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs; HRC §42.002, which gives DFPS primary responsibility for regulating child-care operations; and HRC §42.042, which authorizes DFPS to promulgate minimum standards.

The amendment implements the HRC §42.002.

§745.37. What specific types of operations does Licensing regulate? The charts in paragraphs (1), (2), and (3) of this section list the types of operations for child day care and residential child care that we regulate. Maternity homes and child-placing agencies are included in the residential child-care chart. The chart in paragraph (4) of this section lists the operations verified by a child-placing agency.

(1) (No change.)

(2) Types of Child Day-Care Operations on and after September 1, 2003.
Figure: 40 TAC §745.37(2)

(3) Types of Residential Child-Care Operations.
Figure: 40 TAC §745.37(3)

(4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION
DIVISION 2. EXEMPTIONS FROM REGULATION

40 TAC §745.129

The amendment is proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; HRC §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs; HRC §42.002, which gives DFPS primary responsibility for regulating child-care operations; and HRC §42.042, which authorizes DFPS to promulgate minimum standards.

The amendment implements the Family Code, Chapter 264, as amended by §1.62 of Senate Bill 6, 79th Legislature, Regular Session.

§745.129. What miscellaneous programs are exempt from Licensing regulation?

The following miscellaneous programs are exempt from our regulation:
Figure: 40 TAC §745.129

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
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SUBCHAPTER H. RESIDENTIAL CHILD-CARE MINIMUM STANDARDS
DIVISION 6. TAKING POSSESSION OF A CHILD THROUGH LAW ENFORCEMENT OR A JUVENILE PROBATION OFFICER

40 TAC §§745.4201, 745.4203, 745.4205

The new sections are proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; HRC §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs; HRC §42.002, which gives DFPS primary responsibility for regulating child-care operations; and HRC §42.042, which authorizes DFPS to promulgate minimum standards.

The new sections implement the Family Code, §262.1041, as added by House Bill 798 and Senate Bill 6, 79th Legislature, Regular Session.

§745.4201. May I take possession of a child from a law enforcement or juvenile probation officer?
You may take possession of a child from law enforcement if you are:

(1) A licensed emergency shelter; or

(2) A licensed child-placing agency that we have authorized to take possession of children from a law enforcement or juvenile probation officer.

§745.4203. How does a child-placing agency become authorized to take possession of a child from a law enforcement or juvenile probation officer?
If you are a child-placing agency, the following must occur before you can take possession of a child from a law enforcement or juvenile probation officer:

(1) You submit to us a Request to Accept Children from a Law Enforcement Officer form;

(2) We review the request to determine whether you are equipped to accept these types of emergency admissions; and

(3) If we authorize you to accept such admissions, we add your ability to accept these admissions to the conditions on your license.

§745.4205. What must I do when I take possession of a child from a law enforcement or juvenile probation officer?
When you take possession of a child from a law enforcement or juvenile probation office you must:

(1) With the assistance of the officer who has the child, complete an Admission of a Child from a Law Enforcement Officer form;

(2) Immediately notify DFPS that you have taken possession of the child by calling the abuse neglect hotline; and

(3) Provide the completed form referred to in paragraph (1) of this section to the DFPS investigator who responds to the call.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS
DIVISION 1. OVERVIEW OF INSPECTIONS AND INVESTIGATIONS

40 TAC §§745.8407, 745.8421, 745.8423

The amendment and new sections are proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; HRC §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs; HRC §42.002, which gives DFPS primary responsibility for regulating child-care operations; and HRC §42.042, which authorizes DFPS to promulgate minimum standards.

The amendment and new sections implement the Human Resources Code, §42.042 and §42.044, as amended by House Bill 877 and §1.96 of Senate Bill 6, 79th Legislature, Regular Session.

§745.8407. When will Licensing inspect and/or investigate an operation?

Please refer to the following chart:
Figure: 40 TAC §745.8407

§745.8421. Will Licensing investigate anonymous reports?

(a) We will evaluate an anonymous report regarding standard violations that does not contain allegations that the health or safety of children is at risk to discern whether the allegations have a factual basis. To evaluate the report, we may check the operation's compliance history for similar allegations and/or deficiencies, and call the operation and/or collaterals. If there appears to be a factual basis for the allegations, the investigation will proceed to determine the actual findings. If there does not appear to be a factual basis for the allegations, the investigation will not proceed.

(b) We will investigate an anonymous report alleging abuse or neglect.

§745.8423. Will the findings of an anonymous report be posted on the Department's Internet website, Search Texas Child Care?

(a) If we determine the allegations of an anonymous report to be false or lack factual foundation, we will not post the information concerning the report on the Department's Internet website.

(b) We will post any deficiency found during an investigation inspection that is not related to the allegations on the website as a deficiency found during an inspection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504899
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 438-3437

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS
SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 3. REQUIRED POSTINGS

40 TAC §746.401

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §746.401, concerning what items must I post at my child-care center at all times, in its Minimum Standards for Child-Care Centers chapter. The purpose of the amendment is to require child-care centers to post a list of current employees, as required by Senate Bill 565, 79th Legislature, Regular Session.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the protection of children will be enhanced and the quality of care of children will improve. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Amy Chandler at (512) 438-3134 in DFPS's Licensing Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-337, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

The amendment is proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; HRC §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs; HRC §42.002, which gives DFPS primary responsibility for regulating child-care operations; and HRC §42.042, which authorizes DFPS to promulgate minimum standards.

The amendment implements the HRC, §42.0551, as amended by Senate Bill 565, 79th Legislature, Regular Session.

§746.401. What items must I post at my child-care center at all times?

You must post the following items:

(1) - (7) (No change.)

(8) Telephone numbers specified in §746.405 of this title (relating to What telephone numbers must I post and where must I post them?); [~~and~~]

(9) A list entitled "Current Employees." The list must be printed on paper 8 1/2 inches by 11 inches in size, and must include each employee's first and last name; and

(10) [~~(9)~~] Any other Licensing notices with specific instructions to post the notice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES
SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 3. REQUIRED POSTINGS

40 TAC §747.401

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services

(DFPS), an amendment to §747.401, concerning what items must I post at my child-care home during hours of operation, in its Minimum Standards for Child-Care Homes chapter. The purpose of the amendment is to require child-care homes to post a list of current employees, as required by Senate Bill 565, 79th Legislature, Regular Session.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the protection of children will be enhanced and the quality of care of children will improve. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Amy Chandler at (512) 438-3134 in DFPS's Licensing Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-337, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

The amendment is proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; HRC §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs; HRC §42.002, which gives DFPS primary responsibility for regulating child-care operations; and HRC §42.042, which authorizes DFPS to promulgate minimum standards.

The amendment implements the HRC, §42.0551, as amended by Senate Bill 565, 79th Legislature, Regular Session.

§747.401. What items must I post at my child-care home during hours of operation?

You must post the following in a prominent and publicly accessible place where parents and others may easily view them during all hours of operation:

(1) - (3) (No change.)

(4) Telephone numbers specified in this division; [~~and~~]

(5) A list entitled "Current Employees." The list must be printed on paper at least 8 1/2 inches by 11 inches in size and must include each employee's first and last name; and

(6) [~~(5)~~] Any other Licensing notices requiring posting.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 17. VEHICLE TITLES AND REGISTRATION

The Texas Department of Transportation (department) proposes amendments to §17.2 and §17.3, concerning Motor Vehicle Certificates of Title, §§17.21 - 17.24, 17.28, 17.30, 17.33, and 17.36, concerning Motor Vehicle Registration, §17.54, concerning Automated Equipment, §§17.61, 17.62, 17.65, and 17.68, concerning Nonrepairable and Salvage Motor Vehicles, and §§17.72, 17.73 and 17.79, concerning Salvage Vehicle Dealers.

EXPLANATION OF PROPOSED AMENDMENTS

The 79th Legislature, 2005, passed various legislation relating to motor vehicle certificates of title and registration. House Bill 749 expanded the uses of vehicles displaying "Cotton Vehicle" license plates to allow for transportation of chile peppers and chile pepper transporting or processing equipment. House Bill 988 provided that licensed motor vehicle dealers are required to file applications for certificates of title in the county selected by the purchaser. House Bill 1244 authorized the department to issue "Classic Travel Trailer" license plates. House Bill 1350 amended the definition of a "salvage motor vehicle." House Bill 1646 amended the definition of "motor vehicle" and the definition of "all-terrain vehicle." House Bill 2894 amended the provisions relating to marketing of specialty license plates through a private vendor.

The proposed rules include clarifications of current policies. The department has updated procedures on destruction of valid license plates, tow truck registration, vehicle verification for vehicles entering the country and the transfer of vehicle titles.

House Bill 2971, 78th Legislature, 2003, recodified all provisions relating to issuance of specialty license plates. These provisions are now codified in Transportation Code, Chapter 504. Throughout the proposed rules, citations are corrected to reflect the appropriate Chapter 504 citation. The proposed rules also include corrections of additional citations to correspond with other statutory revisions, and nonsubstantive changes in language to correct terminology and enhance readability.

Section 17.2(22), definition of "motor vehicle," is amended as a result of the provisions of House Bill 1646 by deleting "4-wheel"

in relation to the number of wheels an all-terrain vehicle may have.

Section 17.3(a), Certificates of Title, is amended to correct statutory citations and to correct terminology. "Motor" is added to correspond with terminology used in Transportation Code, Chapter 501, Certificate of Title Act.

Section 17.3(b)(1), Place of application, is amended, pursuant to House Bill 988, to require a licensed motor vehicle dealer to file an application for certificate of title in the county in which the purchaser resides, or where the vehicle is sold or encumbered, as selected by the buyer.

Section 17.3(c)(3), Motor vehicles brought into the United States, is amended by adding new subparagraph (B) and is renumbered accordingly. New subparagraph (B) is added to clarify the existing requirement for submission of a verification of the vehicle identification number with an application for title for a motor vehicle brought into the United States. The verification must be on a form provided by the department and executed by a member of the National Crime Insurance Bureau, the Federal Bureau of Investigation, or a law enforcement auto theft unit. The purpose of this requirement is to aid in the prevention of trafficking stolen vehicles in Texas.

Section 17.3(f), Department notification of second hand vehicle transfers, is amended for clarification. Paragraph (2), Records, is amended to clarify that the department maintains a record of the information provided on the written notice of transfer, but does not mark the automated motor vehicle record to indicate the full name and address of the transferee.

The definition of cotton vehicle is added as §17.21(13) to clarify that cotton vehicles may transport chili pepper modules and equipment used in transporting or processing chili peppers, as well as seed cotton, cotton, cotton burrs, or cotton equipment, as added by House Bill 749. Subsequent paragraphs are renumbered accordingly.

Renumbered §17.21(35), Nonprofit organization, is amended to correct the citation. The Business Organizations Code becomes effective January 1, 2006.

Renumbered §17.21(44), Special category license plate, §17.21(45), Special category license plate fee, and §17.21(47), Sponsoring entity, are amended to correct terminology. The term "special category" has been changed to "specialty" throughout these paragraphs and §17.30 to be consistent with terminology used in Transportation Code, Chapter 504 and §17.28 of this title.

Section 17.22(a), Registration, is amended to update the administrative rule citation to correctly state that the provisions for nonrepairable or salvage vehicle title issuance and registration of nonrepairable motor vehicles is addressed in Subchapter D of this chapter.

Section 17.22(b), Initial application for vehicle registration, is amended to correct terminology in paragraph (2)(A) by adding "nonrepairable or" in relation to registration of a motor vehicle.

Section 17.22(d)(3) is also amended to change the term "must" to "should" relating to the return of a license plate renewal notice. Although return of the license plate renewal notice is preferred, a vehicle owner may renew registration without a renewal notice.

Section 17.23(c)(3)(B) is amended to state the required format for evidence of financial responsibility required from a motor carrier.

Section 17.24(c)(2), Application form, is amended to match statutory language, by deleting the requirement for disclosure of an applicant's entire driver's license or number of the applicant's personal identification card, and requiring only the first four digits of the number.

Section 17.28(c)(2), Number of plates issued, is amended by adding new (B)(ii) to clarify that only one classic travel trailer license plate will be issued to a vehicle eligible to receive that license plate as a result of enactment of House Bill 1244. Subsequent clauses are renumbered accordingly.

Section 17.28(e)(1)(B)(iii), Non-transferable between vehicles, is amended to clarify that classic travel trailer license plates issued as a result of House Bill 1244 are non-transferable between vehicles. A classic travel trailer license plate is issued for use only on a specific travel trailer that has met the criteria provided in House Bill 1244. A new application is required for each travel trailer for which a classic travel trailer license plate is requested to determine eligibility for the license plate. House Bill 1244 did not provide a statutory exemption allowing a classic travel trailer license plate to be transferred between vehicles.

Section 17.28(j), Marketing of specialty license plates through a private vendor, is amended to be consistent with the language of House Bill 2894. In addition to the proposed changes necessary to address statutory revisions, this section is also amended to clarify that a private vendor may agree to market and sell existing "non-qualifying" specialty license plates only. Examples of "qualifying" license plates that will not be marketed or sold under the vendor contract include certain military license plates, plates with restricted distribution (state official, county judge), and plates that are restricted to a certain type of vehicle.

Section 17.30(b)(3), Combination license plates, is amended to clarify current policy by adding that a vehicle registered with combination license plates is required to display only one license plate on the front of the vehicle.

Section 17.30(b)(4) and (5) is amended to correct terminology and to update statutory citations. The term "special category" has been changed to "specialty" to be consistent with terminology used in Transportation Code, Chapter 504 and §17.28 of this title.

Section 17.30(b)(6), Intransit license plates, §17.30(d)(1)(A), March expiration, and §17.30(f), Replacement of lost, stolen, or mutilated commercial vehicle license plates, are corrected to be consistent with statutory language. "Intransit" has been changed to "In Transit" to be consistent with language used in Transportation Code, Chapter 503, and with the legend indicated on the In Transit license plate.

Section 17.30(d)(1), Registration period, is amended by adding new (B)(ii) to clarify that Rental Trailer license plates will be issued for a five-year period with a March 31st expiration date for rental trailers that are part of a rental fleet, as defined in Transportation Code, §501.166. The Rental Trailer classification was previously omitted. The subsequent clause is renumbered accordingly.

Section 17.30(d)(3), Return of License Plate Renewal Notice, is amended to change the term "must" to "should" to be consistent with the changes to §17.22(d)(3).

Section 17.30(f), Replacement of lost, stolen, or mutilated commercial vehicle license plates, is amended to delete an incorrect provision that replacement Tow Truck license plates may not be issued. In 1997, the department began issuing standard-sized

tow truck license plates for registration of Texas tow trucks in lieu of regular truck license plates and a smaller Tow Truck tag. Prior to this date, if the smaller Tow Truck tag was lost, stolen, or mutilated, the owner was required to pay a $15 fee to obtain a new, smaller Tow Truck tag since the tag was not considered "registration." This section is corrected to clarify that replacement Tow Truck license plates may now be issued upon payment of the statutory $5.30 registration replacement fee.

Section 17.33, Registration Fee Credit: Nontransferable, is amended to correct the name of the division that maintains registration and title records from "Motor Vehicle Division" to "Vehicle Titles and Registration Division."

Section 17.36, Water Well Drilling Equipment, is amended to correct the name of the licensing agency to the Texas Department of Licensing and Regulation to be consistent with the provisions of Occupations Code, §1902.001.

Section 17.54(c), is amended to clarify that the criteria for collection of the additional fee for the automated registration and title system is 50,000 "or more" annual registrations, as provided for in Transportation Code §502.1705.

Section 17.54(c) is also amended by deleting the reference in paragraph (2) to the "Allocation of Vehicle Registration Fees report for each calendar year." Deleting this reference eliminates the restriction of using only this one report. Other reports are available to the department that more accurately reflect the volume of registrations to identify which counties meet the criteria of 50,000 or more annual registrations.

Section 17.61(19), Salvage motor vehicle, is amended to be consistent with Transportation Code, §501.091, and to clarify that a salvage motor vehicle includes a vehicle that is missing a major component part, and that the cost of repairs does not include materials and labor for repainting or sales tax on the cost of the repairs, as provided for in House Bill 1350.

Section 17.62(a), Determination of condition of vehicle, is reformatted and amended by adding new paragraph (5) to provide new exemptions from the estimated cost of repair calculations for a damaged vehicle as provided by House Bill 1350. The cost of repairs does not include the costs of materials or labor for repainting the motor vehicle, or sales tax on the total cost of repairs.

Additionally, Subsections 17.62(a)(1), (2) and (4) are amended by deleting the term "estimated" relating to the cost of repairs of a damaged vehicle to be consistent with Transportation Code, §501.091. House Bill 3588, passed by the 78th Legislature, 2003, amended the definition of "salvage motor vehicle" and "nonrepairable motor vehicle." The amended definitions do not include the term "estimated."

Section 17.65, Dismantling, Scrapping, or Destruction of Motor Vehicles, is amended by adding new subsection (b)(2) to clarify that unexpired license plates and registration validation stickers removed from vehicles that are to be dismantled, scrapped, or destroyed must be stored in a secure location.

Section 17.65 is also amended by adding new subsection (d) to clarify current policy that provides a person may destroy unexpired license plates and registration validation stickers once the person receives acknowledgment from the department that the department has received the surrendered evidence of ownership for the applicable vehicle. Subsequent subsections are renumbered accordingly.

Section 17.68(c), Fee for rebuilt salvage certificate of title, is amended to correct the administrative rule citation. A $65 rebuilt salvage fee must accompany an application for a Rebuilt Salvage Certificate of Title unless the applicant provides the written statement explained in §17.68(d)(3)(B).

Section 17.72(c)(4) is amended to correct grammar.

Section 17.73(b), Initial application, is amended by adding the term "legal" to paragraphs (1)(A), (2)(A)(x), and (3)(I). This change is made to clarify the current requirement that an individual applicant, corporate officer or director, or an owner or partner of a partnership, provide their legal name on the application for a salvage vehicle dealer license. This requirement is necessary in order to investigate and conduct criminal background checks on applicants as provided for in §17.75(a) of this chapter.

Section 17.73(b)(1), Form of application for salvage vehicle dealer license, is amended by adding new subparagraph (G) to clarify the current requirement that an individual applicant for a salvage vehicle dealer license must include the applicant's date of birth. This information is necessary to investigate and conduct criminal background checks on applicants as provided for in §17.75(a) of this chapter. Subsequent subparagraphs are renumbered accordingly.

Section 17.79(b), Dismantled, scrapped, or destroyed motor vehicle, is amended to be consistent with the changes in §17.65.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Mike Craig, Interim Director, Vehicle Titles and Registration, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Craig has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be current and accurate information regarding the titling and registration statutes, titling requirements, the availability of Classic Travel Trailer license plates, the expanded uses of Cotton Vehicle license plates, and salvage vehicle dealer licensing and duties in this state. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Mike Craig, Interim Director, Vehicle Titles and Registration Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on December 12, 2005.

SUBCHAPTER A. MOTOR VEHICLE CERTIFICATES OF TITLE

43 TAC §17.2, §17.3

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §501.131, which allows the department to adopt rules to administer Transportation Code, Chapter 501, governing the titling of motor vehicles, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration, and Occupations Code, §2302.051, which authorizes the commission to adopt rules governing salvage vehicle dealers.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapters 501, 502, and 504, and Occupations Code, Chapter 2302.

§17.2. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (21) (No change.)

(22) Motor vehicle--Any motor driven or propelled vehicle required to be registered under the laws of this state; a trailer or semitrailer, other than manufactured housing, that has a gross vehicle weight that exceeds 4,000 pounds; a house trailer; an [~~a four-wheel~~] all-terrain vehicle designed by the manufacturer for off-highway use that is not required to be registered under the laws of this state; or a motorcycle, motor-driven cycle, or moped that is not required to be registered under the laws of this state, other than a motorcycle, motor-driven cycle, or moped designed for and used exclusively on a golf course.

(23) - (37) (No change.)

§17.3. Motor Vehicle Certificates of Title.

(a) Certificates of title. Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall apply for a Texas certificate of title in accordance with Transportation Code, Chapter 501.

(1) (No change.)

(2) Farm vehicles.

(A) - (C) (No change.)

(D) Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §504.504 [~~§502.276~~], may be issued Texas certificates of title.

(3) Exemptions from title. Vehicles registered with the following distinguishing license plates may not be titled under Transportation Code, Chapter 501:

(A) vehicles eligible for machinery license plates and permit license plates in accordance with Transportation Code, §504.504 [~~§502.276~~]; and

(B) (No change.)

(4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for and receive a Texas certificate of title for any stand alone (full) trailer, including homemade full trailers, having an empty weight in excess of 4,000 pounds or any semitrailer having a gross weight in excess of 4,000 pounds. Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §504.504 [~~§502.276~~], may be issued Texas certificates of title. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled.

(A) - (B) (No change.)

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and that is eight body feet or more in width or forty body feet or more in length (not including the hitch), is classified as a mobile home and is titled under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, [~~Texas Civil Statutes, Article 5221f,~~] administered by the Texas Department of Housing and Community Affairs.

(ii) - (iii) (No change.)

(b) Initial application for certificate of title.

(1) Place of application. When motor vehicle ownership is transferred, except as provided by Transportation Code, Chapters 501 and 502 and by §17.63(a) [~~§17.8(a)(1)~~] of this subchapter, a certificate of title application must be filed with the county tax assessor-collector in the county in which the applicant resides or in the county in which the motor vehicle was purchased or encumbered, as selected by the applicant [~~within 20 working days of the date of sale~~].

(2) - (4) (No change.)

(c) Evidence of motor vehicle ownership. Evidence of motor vehicle ownership properly assigned to the applicant must accompany the certificate of title application. Evidence must include, but is not limited to, the following documents.

(1) - (2) (No change.)

(3) Motor vehicles brought into the United States. An application for certificate of title for a motor vehicle last registered or titled in a foreign country must be supported by documents including, but not limited to, the following:

(A) the motor vehicle registration certificate or other verification issued by a foreign country reflecting the name of the applicant as the motor vehicle owner, or reflecting that legal evidence of ownership has been legally assigned to the applicant; [~~and~~]

(B) verification of the vehicle identification number of the vehicle, on a form prescribed by the department, executed by a member of:

(i) the National Insurance Crime Bureau;

(ii) the Federal Bureau of Investigation; or

(iii) a law enforcement auto theft unit; and

(C) [~~(B)~~] for motor vehicles that are less than 25 years old, proof of compliance with United States Department of Transportation (USDOT) regulations, including, but not limited to, the following documents:

(i) the original bond release letter with all attachments advising that the motor vehicle meets federal motor vehicle safety requirements or a letter issued by the USDOT, National Highway Traffic Safety Administration, verifying the issuance of the original bond release letter;

(ii) a legible copy of the motor vehicle importation form validated with an original United States Customs stamp, date, and signature as filed with the USDOT confirming the exemption from the bond release letter required in clause (i) of this subparagraph, or a copy thereof certified by United States Customs;

(iii) a verification of motor vehicle inspection by United States Customs certified on its letterhead and signed by its agent verifying that the motor vehicle complies with USDOT regulations;

(iv) a written confirmation that a physical inspection of the safety certification label has been made by the department and that the motor vehicle meets United States motor vehicle safety standards;

(v) the original bond release letter, verification thereof, or written confirmation from the previous state verifying that a bond release letter issued by the USDOT was relinquished to that jurisdiction, if the non United States standard motor vehicle was last titled or registered in another state for one year or less; or

(vi) verification from the vehicle manufacturer on its letterhead stationary.

(4) Alterations to documentation. An alteration to a registration receipt, certificate of title, manufacturer's certificate, or other evidence of ownership constitutes a valid reason for the rejection of any transaction to which altered evidence is attached.

(A) - (D) (No change.)

(5) (No change.)

(d) - (e) (No change.)

(f) Department notification of second hand vehicle transfers. A transferor of a motor vehicle may voluntarily make written notification to the department of the sale of the vehicle, in accordance with Transportation Code, Chapter 520, Subchapter C, and this subsection.

(1) (No change.)

(2) Records. On receipt of written notice of transfer and a $5.00 fee from the transferor of a motor vehicle, the department will mark its records to indicate the date of transfer and will maintain a record of the information provided on the written notice of transfer [~~the full name and address of the transferee~~].

(3) - (4) (No change.)

(g) - (h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Richard D. Monroe
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§17.21 - 17.24, 17.28, 17.30, 17.33, 17.36

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §501.131, which allows the department to adopt rules to administer Transportation Code, Chapter 501, governing the titling of motor vehicles, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration, and Occupations Code, §2302.051, which authorizes the commission to adopt rules governing salvage vehicle dealers.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapters 501, 502, and 504, and Occupations Code, Chapter 2302.

§17.21. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (12) (No change.)

(13) Cotton vehicle--A vehicle that is used only to transport chili pepper modules, seed cotton, cotton, cotton burrs, or equipment used in transporting or processing chili peppers or cotton that is not more than 10 feet in width.

(14) [~~(13)~~] County or city civil defense agency--An agency authorized by a commissioner's court order or by a city ordinance to provide protective measures and emergency relief activities in the event of hostile attack, sabotage, or natural disaster.

(15) [~~(14)~~] Department--The Texas Department of Transportation.

(16) [~~(15)~~] Director--The director of the Vehicle Titles and Registration Division, Texas Department of Transportation.

(17) [~~(16)~~] Disabled person--A person who has mobility problems that substantially impair the person's ability to ambulate or who is legally blind.

(18) [~~(17)~~] Electric bicycle--A device that has two tandem wheels and is designed to be propelled by an electric motor. An electric bicycle cannot attain a speed of more than 20 miles per hour without the application of human power and weighs 100 pounds or less.

(19) [~~(18)~~] Escrow account--A deposit of a specific amount of money held by the department for security.

(20) [~~(19)~~] Evidence of financial responsibility--The original document or photocopy of any one of the following items:

(A) a liability insurance policy or liability self-insurance or pool coverage document issued in at least the minimum amount required by law;

(B) a personal automobile insurance policy used as evidence of financial responsibility, written for at least the term required by the Insurance Code, Article 5.06;

(C) a standard proof of liability form issued by a liability insurer;

(D) an insurance binder that confirms that the owner is in compliance with the law;

(E) a certificate issued by the Texas Department of Public Safety that shows the vehicle is covered by self-insurance;

(F) a certificate issued by the state treasurer that shows that the owner has money or securities in an amount not less than $55,000 on deposit with the state treasurer;

(G) a certificate issued by the Texas Department of Public Safety that shows that the vehicle has a bond on file with that department, that the bond is in the form and amount required by law, and that the bond is guaranteed by at least two individual sureties each owning real estate within this state;

(H) a certificate issued by the county judge in the county where the owner resides showing that the owner has cash or a cashier's check in an amount not less than $55,000 on deposit with the county judge.

(21) [~~(20)~~] Executive administrator--The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city that by law possesses the authority to conduct covert criminal investigations.

(22) [~~(21)~~] Exempt agency--A governmental body exempted by statute from paying registration fees when registering motor vehicles.

(23) [~~(22)~~] Exempt license plates--Specially designated license plates issued to certain vehicles owned or controlled by exempt agencies.

(24) [~~(23)~~] Exhibition vehicle--

(A) An assembled complete passenger car, truck, or motorcycle that:

(i) is a collector's item;

(ii) is used exclusively for exhibitions, club activities, parades, and other functions of public interest;

(iii) does not carry advertising; and

(iv) has a frame, body, and motor that is at least 25 years old; or

(B) A Former Military Vehicle as defined in Transportation Code, §504.502 [~~§502.275~~].

(25) [~~(24)~~] Fire fighting equipment--Equipment mounted on fire fighting vehicles used in the process of fighting fires, including, but not limited to, ladders and hoses.

(26) [~~(25)~~] Gross weight--The sum of the empty weight of a commercial vehicle (or vehicles, if operated in combination), combined with its maximum carrying capacity, rounded up to the next 100 pounds.

(27) [~~(26)~~] Highway construction project--That section of the highway between the warning signs giving notice of a construction area.

(28) [~~(27)~~] International symbol of access--The symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress of Rehabilitation of the Disabled.

(29) [~~(28)~~] Legally blind--Having not more than 20/200 visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(30) [~~(29)~~] Light truck--As defined in Transportation Code, §541.201, any truck with a manufacturer's rated carrying capacity not to exceed two thousand pounds, including those trucks commonly known as pickup trucks, panel delivery trucks, and carryall trucks.

(31) [~~(30)~~] Make--The trade name of the vehicle manufacturer.

(32) [~~(31)~~] Motor bus--A motor-propelled vehicle used to transport persons on public highways for compensation, other than a street or suburban bus.

(33) [~~(32)~~] Motorized mobility device--A device designed for transportation of persons with physical disabilities that:

(A) has three or more wheels;

(B) is propelled by a battery-powered motor;

(C) has not more than one forward gear; and

(D) is not capable of speeds exceeding eight miles per hour.

(34) [~~(33)~~] Net carrying capacity--150 pounds multiplied by the seating capacity as determined by the manufacturer's rated seating capacity, exclusive of the driver's or operator's seat, or in the case of a vehicle that is not rated by the manufacturer, as determined by an allowance of one passenger for each sixteen inches, exclusive of the driver's or operator's seat.

(35) [~~(34)~~] Nonprofit organization--An unincorporated association or society or a corporation that is incorporated or holds a certificate of authority under the Business Organizations Code [~~Texas Non-Profit Corporation Act, as amended (Texas Civil Statutes, Article 1396-1.01 et seq.)~~].

(36) [~~(35)~~] Owner--A person who holds the legal title to a vehicle, has the legal right to possess a vehicle, or has the legal right to control a vehicle.

(37) [~~(36)~~] Passenger car--In accordance with Transportation Code, §502.001, any motor vehicle other than a motorcycle, golf cart, or a bus, designed or used primarily for the transportation of persons.

(38) [~~(37)~~] Political subdivision--A county, municipality, local board, or other body of this state having authority to provide a public service.

(39) [~~(38)~~] Registration period--A designated period during which registration is valid. A registration period always begins on the first day of a calendar month and ends on the last day of a calendar month.

(40) [~~(39)~~] Rental fleet--A fleet of five or more vehicles that are owned by the same owner, offered for rent or rented without drivers, and designated by the owner in the manner prescribed by the department as a rental fleet.

(41) [~~(40)~~] Rental trailer--A utility trailer that has a gross weight of 4,000 pounds or less and is part of a rental fleet.

(42) [~~(41)~~] Road tractor--A vehicle designed for the purpose of mowing the right of way of a public highway or a motor vehicle designed or used for drawing another vehicle or a load and not constructed to carry:

(A) an independent load; or

(B) a part of the weight of the vehicle and load to be drawn.

(43) [~~(42)~~] Service agreement--A contractual agreement that allows individuals or businesses to access the department's vehicle registration records.

(44) [~~(43)~~] Specialty [~~Special category~~] license plate--A special design license plate issued by the department under statutory authority.

(45) [~~(44)~~] Specialty [~~Special category~~] license plate fee--Statutorily or department required fee payable on submission of an application for a specialty [~~special category~~] license plate, symbol, tab, or other device, and collected in addition to statutory motor vehicle registration fees.

(46) [~~(45)~~] Special district--A political subdivision of the state established to provide a single public service within a specific geographical area.

(47) [~~(46)~~] Sponsoring entity--An institution, college, university, sports team, or any other individual or group that desires to support a particular specialty [~~special category~~] license plate by coordinating the collection and submission of the prescribed applications and associated license plate fees or deposits for that particular license plate.

(48) [~~(47)~~] Street or suburban bus--A vehicle, other than a passenger car, used to transport persons for compensation exclusively within the limits of a municipality or a suburban addition to a municipality.

(49) [~~(48)~~] Tandem axle group--Two or more axles spaced 40 inches or more apart from center to center having at least one common point of weight suspension.

(50) [~~(49)~~] Token trailer--:

(A) A semitrailer that has a gross weight of more than 6,000 pounds and is operated in combination with a truck; or

(B) a truck tractor that has been issued an apportioned license plate, a combination license plate, or a forestry vehicle license plate.

(51) [~~(50)~~] Tow truck--A motor vehicle equipped with a mechanical device adapted or used to tow, winch, or otherwise move another motor vehicle.

(52) [~~(51)~~] Travel trailer--A house trailer-type vehicle or a camper trailer that is less than eight feet in width or 40 feet in length, exclusive of any hitch installed on the vehicle, and is designed primarily for use as temporary living quarters in connection with recreational, camping, travel, or seasonal use and not as a permanent dwelling.

(53) [~~(52)~~] Unconventional vehicle--A vehicle built entirely as machinery from the ground up, that is permanently designed to perform a specific function, and is not designed to transport property.

(54) [~~(53)~~] Vehicle--A device in or by which a person or property is or may be transported or drawn on a public highway, other than a device used exclusively on stationary rails or tracks.

(55) [~~(54)~~] Vehicle classification--The grouping of vehicles in categories for the purpose of registration, based on design, carrying capacity, or use.

(56) [~~(55)~~] Vehicle description--Information regarding a specific vehicle, including, but not limited to, the vehicle make, model year, body style, and vehicle identification number.

(57) [~~(56)~~] Vehicle identification number--A number assigned by the manufacturer of a motor vehicle or the department that describes the motor vehicle for purposes of identification.

(58) [~~(57)~~] Vehicle inspection sticker--A sticker issued by the Texas Department of Public Safety signifying that a vehicle has passed all applicable safety and emissions tests.

(59) [~~(58)~~] Vehicle registration insignia--A license plate, symbol, tab, or other device issued by the department evidencing that all applicable fees have been paid for the current registration period and allowing the vehicle to be operated on the public highways.

(60) [~~(59)~~] Vehicle registration record--Information contained in the department's files that reflects, but is not limited to, the make, vehicle identification number, model year, body style, license number, and the name of the registered owner.

(61) [~~(60)~~] Volunteer fire department--An association that is organized for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services.

§17.22. Motor Vehicle Registration.

(a) Registration. Unless otherwise exempted by law or this chapter, a vehicle to be used on the public highways of this state must be registered in accordance with Transportation Code, Chapter 502 and the provisions of this section. Transportation Code, Chapter 501, Subchapter E and Subchapter D [§17.8] of this chapter [~~title (relating to Certificates of Title for Salvage Vehicles)~~] prohibit registration of a vehicle whose owner has been issued a salvage or nonrepairable vehicle title. These vehicles may not be operated on a public roadway.

(b) Initial application for vehicle registration.

(1) (No change.)

(2) The application must be accompanied by the following documents:

(A) evidence of vehicle ownership as specified in Transportation Code, §501.030, unless the vehicle has been issued a nonrepairable or salvage vehicle title in accordance with Transportation Code, Chapter 501, Subchapter D [~~E~~];

(B) - (E) (No change.)

(3) - (4) (No change.)

(c) Vehicle registration insignia.

(1) On receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue vehicle registration insignia to be displayed on the vehicle for which the registration was issued for the current registration period.

(A) - (B) (No change.)

(C) If the vehicle is registered as a Former Military Vehicle as prescribed by Transportation Code, §504.502 [~~§502.275~~], the vehicle's registration number shall be displayed instead of displaying a symbol, tab, or license plate.

(i) - (ii) (No change.)

(2) - (4) (No change.)

(d) Vehicle registration renewal.

(1) - (2) (No change.)

(3) The license plate renewal notice should [~~must~~] be returned by the vehicle owner to the appropriate county tax assessor-collector or to the tax assessor-collector's deputy, either in person or by mail. The registration renewal notice may be used in connection with the renewal of registration at selected county tax assessor-collector offices via the internet. The renewal notice must be accompanied by the following documents and fees:

(A) - (C) (No change.)

(4) (No change.)

(5) Renewal of expired vehicle registrations.

(A) - (D) (No change.)

(E) If a vehicle is registered in accordance with Transportation Code, §502.164, §502.167, §502.188, §502.203, [~~§504.188,~~] §504.315, §504.401, §504.405, §504.411, or §504.505, and if the vehicle's registration is renewed more than one month after expiration of the previous registration, the registration fee will be prorated.

(F) (No change.)

(6) (No change.)

(e) - (i) (No change.)

§17.23. Temporary Registration Permits.

(a) (No change.)

(b) Permit categories. The department will issue the following categories of temporary registration permits.

(1) (No change.)

(2) Annual permits.

(A) Transportation Code, §502.353 [~~Texas Civil Statutes, Article 6675a-6c~~], authorizes the department to issue annual permits to provide for the movement of foreign commercial vehicles that are not authorized to travel on Texas highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. The department will issue annual permits:

(i) - (ii) (No change.)

(B) - (C) (No change.)

(3) (No change.)

(4) Temporary agricultural permits.

(A) Transportation Code, §502.355 [~~§502.354~~], authorizes the department to issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer to be used in the movement of all agriculture products produced in Texas:

(i) - (ii) (No change.)

(B) - (F) (No change.)

(5) - (6) (No change.)

(c) Application process.

(1) - (2) (No change.)

(3) Fees and documentation. The application must be accompanied by:

(A) (No change.)

(B) evidence of financial responsibility:

(i) as required by Transportation Code, Chapter 502, Subchapter G, provided that all policies written for the operation of motor vehicles must be issued by an insurance company or surety company authorized to write motor vehicle liability insurance in Texas; or [~~and~~]

(ii) if the applicant is a motor carrier as defined by §18.2 of this title (relating to Definitions), indicating that the vehicle is registered in compliance with Chapter 18, Subchapter B of this title; and

(C) (No change.)

(4) (No change.)

(d) - (f) (No change.)

(g) Agreements with other jurisdictions. In accordance with Transportation Code, §502.054 and Chapter 648 [~~Texas Civil Statutes, Article 6675c-2~~], the executive director of the department may enter into a written agreement with an authorized officer of a state, province, territory, or possession of a foreign country to provide for the exemption from payment of registration fees by nonresidents if residents of this state are granted reciprocal exemptions. The executive director may enter into such agreement only upon:

(1) - (2) (No change.)

(h) Exemptions. A foreign commercial vehicle operating in accordance with Transportation Code, Chapter 648 [~~Texas Civil Statutes, Article 6675c-2~~] is exempt from the display of a temporary registration permit if:

(1) - (2) (No change.)

§17.24. Disabled Person License Plates and Identification Placards.

(a) Purpose. Transportation Code, Chapters 504 [~~502~~] and 681, charges the department with the responsibility for issuing specially designed license plates and identification placards for disabled persons. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of disabled person license plates and placards.

(b) Issuance.

(1) Disabled person license plates.

(A) Eligibility. In accordance with Transportation Code, §504.201 [~~§502.253~~], the department will issue specially designed license plates displaying the international symbol of access to permanently disabled persons or their transporters instead of regular motor vehicle license plates.

(B) - (C) (No change.)

(2) (No change.)

(c) Initial application.

(1) (No change.)

(2) Application form. The application must be made on a form prescribed by the director and must, at a minimum, include the name, address, and signature of the disabled person, and:

(A) the first four digits of the applicant's driver's license number or the number of a personal identification card issued to the applicant under Transportation Code, Chapter 521; or

(B) (No change.)

(3) Accompanying documentation.

(A) In accordance with Transportation Code, §504.201 [~~§502.253~~] and §681.003, and unless otherwise exempted by law or this section, an initial application for disabled person license plates and an identification placard must be accompanied by evidence that the operator or regularly transported person is disabled.

(B) - (D) (No change.)

(4) (No change.)

(5) Issuance of disabled person license plates and identification placards to certain institutions.

(A) In accordance with Transportation Code, §504.203 [~~§502.2531~~] and §681.0032, the department will issue disabled person license plates or a blue permanently disabled person identification placard for display on a van or bus operated by an institution, facility, or residential retirement community that is licensed under Health and Safety Code, Chapter 242, 246, or 247.

(B) - (D) (No change.)

(d) - (g) (No change.)

§17.28. Specialty License Plates, Symbols, Tabs, and Other Devices.

(a) - (b) (No change.)

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) (No change.)

(2) Number of plates issued.

(A) (No change.)

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

(i) Antique Vehicle;

(ii) Classic Travel Trailer;

(iii) [~~(ii)~~] Cotton Vehicle;

(iv) [~~(iii)~~] Disaster Relief;

(v) [~~(iv)~~] Forestry Vehicle;

(vi) [~~(v)~~] Golf Cart;

(vii) [~~(vi)~~] Log Loader;

(viii) [~~(vii)~~] Military Vehicle; and

(ix) [~~(viii)~~] Parade.

(C) (No change.)

(3) - (8) (No change.)

(d) (No change.)

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) (No change.)

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

(i) - (ii) (No change.)

(iii) Classic Auto, Classic Truck, [~~and~~] Classic Motorcycle, and Classic Travel Trailer license plates;

(iv) - (vi) (No change.)

(C) (No change.)

(2) (No change.)

(f) - (i) (No change.)

(j) Marketing of specialty license plates through a private vendor. The commission authorizes [~~may authorize~~] the department to enter into a [~~an exclusive~~] contract with the private vendor whose proposal to perform all services under the contract is most advantageous to the state, as determined from competitive sealed proposals, that satisfies the requirements of Transportation Code, §504.851 for the marketing and sale of specialty license plates.

(1) Types of license plates. The private vendor may agree to market and sell existing non-qualifying specialty license plates issued under Transportation Code, Chapter 504, Subchapters B and G, and new specialty license plates issued under Transportation Code, §504.801 and §504.851. Non-qualifying specialty license plates are license plates that do not have specific qualifications that may be issued to anyone.

(2) New specialty license plates. The decision to issue or not to issue new specialty license plates for marketing and sale through the private vendor shall be made jointly under the terms of the contract. The contract does not prohibit the department from creating new specialty license plates on its own initiative or prohibit an organization from applying for a new specialty license plate directly to the department in accordance with Transportation Code, §504.801.

[~~(3) Costs. The department will recover all costs to the department, both direct and indirect, associated with implementing and managing the private marketing and sale of specialty license plates, including equipment, software, labor, overhead, materials, manufacturing, and shipping costs. In addition, all programming costs required to implement this program must be paid in advance by the private vendor.~~]

[~~(4) License plate design. All specialty license plates shall incorporate a reflectorized white background.~~]

(3) [~~(5)~~] Refunds. Personalized specialty license plate applications that are not approved by the department will be rejected by the private vendor, and the refund of fees will be the responsibility of the private vendor. Refunds to customers dissatisfied with an unused specialty license plate sold by the private vendor will be the responsibility of the private vendor.

(4) [~~(6)~~] Fees. [~~Marketing. The private vendor must submit an annual marketing plan for approval by the department.~~] The private vendor must [~~also~~] submit a schedule of specialty license plate fees for approval by the commission. [~~The department may approve, disapprove, or limit any aspect of the plan.~~]

§17.30. Commercial Vehicle Registration.

(a) (No change.)

(b) Commercial vehicle registration classifications.

(1) - (2) (No change.)

(3) Combination license plates.

(A) Specifications. A truck or truck tractor with a manufacturer's rated carrying capacity in excess of one ton used or to be used in combination with a semitrailer having a gross weight in excess of 6,000 pounds, shall be registered with combination license plates. Such vehicles must be registered for a gross weight equal to the combined gross weight of all the vehicles in the combination. Only one combination license plate is required and must be displayed on the front of the truck or truck tractor. When displaying a combination license plate, a truck or truck tractor is not restricted to pulling a semitrailer licensed with a Token Trailer license plate; and may legally pull semitrailers and full trailers displaying other types of Texas license plates or license plates issued out of state. The following vehicles are not required to be registered in combination:

(i) - (ix) (No change.)

(B) - (D) (No change.)

(4) Cotton Vehicle license plates. The department will issue Cotton Vehicle license plates in accordance with Transportation Code, §504.505 [~~§502.277~~] and §17.28 of this title (relating to Specialty [~~Special Category~~] License Plates, Symbols, Tabs, and Other Devices).

(5) Forestry Vehicle license plates. The department will issue Forestry Vehicle license plates in accordance with Transportation Code, §504.507 [~~§502.280~~] and §17.28 of this title.

(6) In Transit [~~Intransit~~] license plates. The department may issue an In Transit [~~Intransit~~] license plate annually to any person, firm, or corporation engaged in the primary business of transporting and delivering by means of the full mount, saddle mount, tow bar, or any other combination, new vehicles and other vehicles from the manufacturer or any other point of origin to any point of destination within the State. Each new vehicle being transported, delivered, or moved under its own power in accordance with this paragraph must display an In Transit [~~Intransit~~] license plate in accordance with Transportation Code, §503.035.

(7) (No change.)

(8) Token Trailer license plates.

(A) (No change.)

(B) Validity. A Token Trailer license plate is valid only when it is displayed on a semitrailer that is being pulled by a truck or a truck tractor that has been properly registered with Forestry Vehicle (in accordance with Transportation Code, §504.507 [~~§502.280~~]), Combination (in accordance with Transportation Code, §502.167), or Apportioned (in accordance with Transportation Code, §502.054) license plates for combined gross weights that include the weight of the semitrailer, unless exempted by Transportation Code, §502.352 and §623.011.

(C) - (E) (No change.)

(9) (No change.)

(c) (No change.)

(d) Renewal of commercial license plates.

(1) Registration period. The department will establish the registration period for commercial vehicles, unless specified by statute. Commercial license plates are issued for established annual registration periods as follows.

(A) March expiration. The following license plates are issued for the established annual registration period of April 1st through March 31st of the following year:

(i) - (ii) (No change.)

(iii) In Transit [~~Intransit~~] license plates;

(iv) - (v) (No change.)

(B) Five year registration with March 31st expiration. The following license plates are available with a five-year registration period. Registration fees for the license plates listed below may be paid on an annual basis, or may be paid up front for the entire five-year period:

(i) Five-year Apportioned Trailer license plates, issued for company-owned semitrailers in a carrier's apportioned trailer fleet; [~~and~~]

(ii) Five-year Rental Trailer license plates issued for rental trailers that are part of a rental fleet; and

(iii) [~~(ii)~~] Five-year Token Trailer license plates, available to owners of intrastate fleets consisting of 50 or more company-owned semitrailers.

(2) (No change.)

(3) Return of License Plate Renewal Notices. License Plate Renewal Notices should [~~must~~] be returned by the vehicle owner to the department or the appropriate county tax assessor-collector, as indicated on the License Plate Renewal Notice. Unless otherwise exempted by law, License Plate Renewal Notices may be returned either in person or by mail, and shall be accompanied by:

(A) - (D) (No change.)

(4) (No change.)

(e) (No change.)

(f) Replacement of lost, stolen, or mutilated commercial vehicle license plates.

(1) In Transit [~~Intransit and Tow Truck~~] license plates. Replacement In Transit [~~Intransit and Tow Truck~~] license plates will not be issued. Additional In Transit [~~Intransit and Tow Truck~~] license plates may be obtained at any time during the registration year by submitting a new application in accordance with subsection (d) of this section.

(2) Other license plates. Except for In Transit [~~the vehicle~~] license plates identified in paragraph (1) of this subsection, an owner of lost, stolen, or mutilated commercial vehicle license plates may obtain replacement license plates by filing an Application for Replacement Plates and remitting the prescribed fee to the county tax assessor-collector of the county in which the owner resides.

§17.33. Registration Fee Credit: Nontransferable.

A registration fee credit voucher will be issued only to the person whose name appears as the owner of the vehicle on the registration and title records of the Vehicle Titles and Registration [~~Motor Vehicle~~] Division at the time the vehicle is destroyed. Registration fee credit vouchers are nontransferable and are not redeemable for cash under any circumstances.

§17.36. Water Well Drilling Equipment.

Prior to the approval of a machinery license plate for any piece of mechanically qualified water well drilling equipment, the owner must first present proof of a current license from the Texas Department of Licensing and Regulation [~~Natural Resource Conservation Commission~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504921
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 463-8630

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SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM

43 TAC §17.54

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §501.131, which allows the department

to adopt rules to administer Transportation Code, Chapter 501, governing the titling of motor vehicles, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration, and Occupations Code, §2302.051, which authorizes the commission to adopt rules governing salvage vehicle dealers.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapters 501, 502, and 504, and Occupations Code, Chapter 2302.

§17.54. Automated Equipment.

(a) - (b) (No change.)

(c) Enhancements to RTS.

(1) The department will collect an additional fee of $1 in counties with [~~more than~~] 50,000 or more annual motor vehicle registrations for the purpose of enhancing the RTS, providing for automated on-site production of registration insignia, or providing for automated self-serve registration.

(2) The department will [~~use its "Allocation of Vehicle Registration Fees" report for each calendar year to~~] determine which counties meet the criteria for collecting the $1 additional fee, on an annual basis.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

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Richard D. Monroe
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

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SUBCHAPTER D. NONREPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §§17.61, 17.62, 17.65, 17.68

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §501.131, which allows the department to adopt rules to administer Transportation Code, Chapter 501, governing the titling of motor vehicles, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration, and Occupations Code, §2302.051, which authorizes the commission to adopt rules governing salvage vehicle dealers.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapters 501, 502, and 504, and Occupations Code, Chapter 2302.

§17.61. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (18) (No change.)

(19) Salvage motor vehicle--A motor vehicle, regardless of the year model:

(A) that is:

(i) damaged or is missing a major component part to the extent that the cost of repairs exceeds the actual cash value of the motor vehicle immediately before the damage; or

(ii) damaged and comes into this state under an out-of-state ownership document that states on its face "accident damage," "flood damage," "inoperable," "rebuildable," "salvageable," or similar notation, and is not an out-of-state ownership document with a "rebuilt," "prior salvage," or similar notation, or a nonrepairable motor vehicle; and

(B) does not include:

(i) a motor vehicle for which an insurance company has paid a claim for[:]

[~~(i)~~] repairing hail damage, [;] or

[~~(ii)~~] theft, unless the motor vehicle was damaged during the theft and before recovery to the extent that the cost of repair exceeds the actual cash value of the motor vehicle immediately before the damage;[.]

(ii) the cost of materials or labor for repainting the motor vehicle; or

(iii) sales tax on the total cost of repairs.

(20) - (21) (No change.)

§17.62. Requirement for Nonrepairable or Salvage Vehicle Title.

(a) Determination of condition of vehicle.

(1) Salvage motor vehicle. When a vehicle is damaged, the actual cash value of the motor vehicle immediately before the damage and the [~~estimated~~] cost of repairs shall be used to determine whether the damage is sufficient to classify the motor vehicle as a salvage motor vehicle.

(2) Nonrepairable motor vehicle. When a vehicle is damaged, the actual cash value of the motor vehicle immediately before the damage and the [~~estimated~~] cost of repairs, or alternate method commonly used by the insurance industry, shall be used to determine whether the damage is sufficient to classify the motor vehicle as a nonrepairable motor vehicle.

(3) (No change.)

(4) The [~~estimated~~] cost of repairs, including parts and labor, shall be determined by:

(A) using a manual of repair costs or other instrument that is generally recognized and used in the motor vehicle industry to determine those costs; [,] or

(B) an estimate of the actual cost of the repair parts and the estimated labor costs computed by using hourly rate and time allocations that are reasonable and commonly assessed in the repair industry in the community in which the repairs are performed.

(5) The cost of repairs does not include:

(A) the cost of:

(i) repairs related to gradual damage to a motor vehicle; [,]

(ii) repairs related to hail damage; or [,]

(iii) materials and labor for repainting or when the damage is solely to the exterior paint of the motor vehicle; or [.]

(B) sales tax on the total cost of repairs.

(b) - (g) (No change.)

§17.65. Dismantling, Scrapping, or Destruction of Motor Vehicles.

(a) (No change.)

(b) The person shall:

(1) maintain records of each motor vehicle that will be dismantled, scrapped, or destroyed, as provided by §17.80(d) of this chapter (relating to Record of Purchases, Sales, and Inventory); and[.]

(2) store all unexpired license plates and registration validation stickers removed from those vehicles in a secure location.

(c) (No change.)

(d) License plates and registration validation stickers removed from vehicles reported under subsection (a)(1) of this section may be destroyed upon receipt of the acknowledged report from the department.

(e) [~~(d)~~] The department will place an appropriate notation on motor vehicle records for which ownership documents have been surrendered to the department.

(f) [~~(e)~~] Not later than 60 days after the motor vehicle is dismantled, scrapped, or destroyed, the person shall report to the department and provide evidence that the motor vehicle has been dismantled, scrapped, or destroyed.

§17.68. Rebuilt Salvage Motor Vehicles.

(a) - (b) (No change.)

(c) Fee for rebuilt salvage certificate of title. In addition to the statutory fee for a title application and any other applicable fees, a $65 rebuilt salvage fee must accompany the application, unless the applicant provides the evidence described in subsection (d)(3)(B) [~~(d)(2)(B)~~] of this section.

(d) Accompanying documentation. The application for a certificate of title for a rebuilt nonrepairable or salvage motor vehicle must be supported, at a minimum, by the following documents:

(1) (No change.)

(2) a rebuilt affidavit, on a notarized form prescribed by the department that includes:

(A) - (D) (No change.)

(E) the signature of the owner, [~~or~~] the owner's authorized agent; and

(F) (No change.)

(3) - (7) (No change.)

(e) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Richard D. Monroe
General Counsel
Texas Department of Transportation
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SUBCHAPTER E. SALVAGE VEHICLE DEALERS

43 TAC §§17.72, 17.73, 17.79

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §501.131, which allows the department to adopt rules to administer Transportation Code, Chapter 501, governing the titling of motor vehicles, Transportation Code, §502.0021, which authorizes the department to adopt rules governing the issuance of motor vehicle registration, and Occupations Code, §2302.051, which authorizes the commission to adopt rules governing salvage vehicle dealers.

CROSS REFERENCE TO STATUTE: Transportation Code, Chapters 501, 502, and 504, and Occupations Code, Chapter 2302.

§17.72. Classifications of Salvage Vehicle Dealer Licenses.

(a) - (b) (No change.)

(c) Exemptions. The provisions of this subchapter do not apply to:

(1) - (3) (No change.)

(4) a person who is a non-United States resident who purchases nonrepairable or salvage motor vehicles [~~vehicle~~] for export only;

(5) - (9) (No change.)

§17.73. Salvage Vehicle Dealer License.

(a) (No change.)

(b) Initial application. An applicant for a salvage vehicle dealer license must apply on a form prescribed by the department.

(1) Form of application for salvage vehicle dealer license. The application form must be signed by the applicant, be accompanied by the application fee, and include:

(A) the legal name, each business address, and each business telephone number of the applicant;

(B) - (F) (No change.)

(G) the applicant's date of birth;

(H) [~~(G)~~] the applicant's federal tax identification number, if any;

(I) [~~(H)~~] the applicant's state sales tax number;

(J) [~~(I)~~] the applicant's social security number if the applicant is an individual; and

(K) [~~(J)~~] each classification of license for which the form is being submitted.

(2) Corporate salvage vehicle dealer license. If a salvage vehicle dealer license applicant intends to engage in business through a corporation, the applicant must apply on a form prescribed by the department.

(A) Form of application. The form must indicate the name of the corporation, as it appears on file with the secretary of state, be signed by the applicant, be accompanied by the application fee, and include:

(i) - (ix) (No change.)

(x) the legal name, address, date of birth, and social security number of each of the principal officers and directors of the corporation; and

(xi) (No change.)

(B) (No change.)

(3) Partnership salvage vehicle dealer license. If a salvage vehicle dealer license applicant intends to engage in business through a partnership, the applicant must apply on a form prescribed by the department. The form must be signed by the applicant, be accompanied by the application fee, and include:

(A) - (H) (No change.)

(I) the legal name, address, date of birth, and social security number of each owner and partner; and

(J) (No change.)

(c) (No change.)

§17.79. Licensee Duties.

(a) (No change.)

(b) Dismantled, scrapped, or destroyed motor vehicle.

(1) - (2) (No change.)

(3) The salvage vehicle dealer shall:

(A) maintain records of each motor vehicle that is dismantled, scrapped or destroyed, as provided by §17.80(d) of this subchapter; and [,]

(B) store all unexpired license plates and registration validation stickers removed from those vehicles in a secure location.

(4) The salvage vehicle dealer may destroy the license plates and registration validation stickers to the vehicles reported under paragraph (1)(A) of this subsection upon receipt of the acknowledged report from the department.

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 21. RIGHT OF WAY
SUBCHAPTER N. RAIL FACILITIES

43 TAC §21.801, §21.802

The Texas Department of Transportation (department) proposes new §21.801 and §21.802, concerning acquisition and disposal of real property for rail facilities.

EXPLANATION OF PROPOSED NEW SECTIONS

Transportation Code, Chapter 91, Subchapter E authorizes the Texas Transportation Commission (commission) to acquire a right-of-way, a property right, or other interest in real property determined to be necessary or convenient for the department's acquisition, construction, maintenance, or operation of rail facilities, and to sell, convey, or otherwise dispose of any rights or other interests in real property determined to no longer be needed for department purposes. The proposed new sections establish procedures for the implementation and administration of Transportation Code, Chapter 91, Subchapter E.

Section 21.801(a) adopts for rail facilities the same acquisition procedures that currently apply to highways as set forth in 43 TAC Chapter 21, Subchapter A (relating to Land Acquisition Procedures), Subchapter D (relating to Expenses Incidental to Transfer of Title To State), and Subchapter G (relating to Relocation Assistance and Benefits).

Section 21.801(b) describes the requirements for purchasing property along alternative potential routes for a rail facility even if only one of those potential routes will ultimately be chosen as the final route. Specifically, §21.801(b) provides for a two-step process. In the first step, the commission must authorize the acquisition along alternative potential routes. The second step requires the district engineer to analyze the particular property to be acquired in relation to the needs and conditions of the specific rail facility. The district engineer must find that the property may possibly be used in connection with the proposed rail facility. In addition, the district engineer must determine that the size and location of the property is reasonably related to the facility's possible design and alignment and that the acquisition may be economically beneficial to the department by preserving undeveloped or underdeveloped property for a rail corridor. These additional requirements seek to provide justification for the acquisition along alternative routes by the person in a district who has the most complete overview and control of the project.

Section 21.801(c) clarifies that the department can use the services of a right of way acquisition provider under comprehensive development agreements and pass-through fare agreements.

Section 21.802(a) adopts for rail facilities the same disposal of real property procedures for sale by sealed bid that currently apply to property that was acquired for highway purposes as set forth in 43 TAC Chapter 21, Subchapter F (relating to Disposal of Real Estate Interests).

Section 21.802(b) creates priorities for sale of rail facility real property interests. They are similar to the priorities created by Transportation Code, §202.021, for the sale of property acquired for highway purposes. The primary difference is an equal first priority for both operating railroad companies and governmental entities with the authority to condemn. This is designed to maximize the potential for preserving rail facilities after such use is surplus to the department's needs.

Section 21.802(c) provides that the priorities will not apply in an exchange situation in order to allow for flexibility in the use of

surplus department property as consideration for acquiring other needed real property.

Section 21.802(d) authorizes the commission to consider the cost of future maintenance as fair value consideration for the transfer of real property to another governmental entity. This is in lieu of monetary payment and is similar to the authority created by Transportation Code, §202.021, for the sale of property acquired for highway purposes.

Section 21.802(e) directs the revenue from the sale of rail facility property to be deposited to the credit of the state highway fund. This is similar to the requirement created by Transportation Code, §202.021, for the sale of property acquired for highway purposes.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the new sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections. There are no anticipated economic costs for persons required to comply with the sections as proposed.

John P. Campbell, P.E., Director, Right of Way Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

PUBLIC BENEFIT

Mr. Campbell has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the new sections will be to further the department's mission to provide an efficient, timely, cost effective and fair process of acquiring real property needed for development of transportation facilities. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new sections may be submitted to John P. Campbell, P.E., Director, Right of Way Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on December 12, 2005.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.003, which authorizes the commission to adopt rules necessary to implement Chapter 91.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 91, Subchapter E.

§21.801. Acquisition of Real Property.

(a) The term rail facility, when used in this subchapter, shall have the definition as set forth in Transportation Code, §91.001. Except as otherwise provided herein, the department will comply with policies and procedures prescribed in 43 TAC Chapter 21, Subchapters A (relating to Land Acquisition Procedures), D (relating to Expenses Incidental to Transfer of Title To State), and G (relating to Relocation Assistance and Benefits) of this title in the acquisition of right-of-way, a property right or other interest in real property for the acquisition, construction, maintenance or operation of rail facilities. For the purposes of this subsection, references in the above subchapters to highway, road and roadway are considered references to railroad right-of-way and rail facilities. For all rail facilities, right-of-way is acquired with access between abutting properties and the rail facility permitted or denied in accordance with the approved design of the projects.

(b) The department may purchase real property along alternative potential routes for a rail facility if the commission has authorized such an acquisition and the district engineer determines that:

(1) the property to be acquired is or may possibly be used in connection with the rail facility;

(2) the size and location of the property is reasonably related to the possible future design and alignment of the rail facility; and

(3) the acquisition along alternative potential routes may be economically beneficial to the department by preserving undeveloped or underdeveloped property for a new rail corridor.

(c) Right-of-way, a property right or other interest in real property for a rail facility may be acquired directly by other public or private entities under contract with the department in accordance with Transportation Code, §91.052, §91.054, and §91.075, including the use of comprehensive development agreements and pass-through fare agreements. These entities are in addition to those listed in §21.1 of this title that are otherwise authorized by law to acquire right-of-way for rail facilities.

§21.802. Disposal of Real Property.

(a) Except as otherwise provided herein, the department will comply with policies and procedures prescribed in 43 TAC Chapter 21, Subchapter F of this title (relating to Disposal of Real Estate Interests) in the sale, conveyance or other disposition of any rights or other interests in real property acquired under this Subchapter N. For the purposes of this subsection (a), references in Subchapter F to highway, road and roadway are considered references to railroad right-of-way and rail facilities.

(b) Real property interests shall be transferred or sold in consideration of such fair value as determined by the commission to be appropriate, and with the following priorities:

(1) to an operating railroad company or railroad district, whether private or public, or to a governmental entity with the authority to condemn the property,

(2) to abutting or adjoining landowners, or

(3) to the general public.

(c) The priorities described in subsection (b) shall not apply to an exchange of an interest in real property acquired but not needed for a department purpose as whole or partial consideration for another interest in real property needed for a department purpose.

(d) In lieu of monetary payment for real property transferred to a governmental entity under this section, the commission may determine that fair value consideration exists if the estimated cost of future maintenance on the rail facility property to be transferred equals or exceeds the appraised fair market value of such property.

(e) Revenue from the transfer or sale of property under this Subchapter N shall be deposited to the credit of the state highway fund.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Richard D. Monroe
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Texas Department of Transportation
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CHAPTER 23. TRAVEL INFORMATION
SUBCHAPTER B. TRAVEL INFORMATION

43 TAC §23.13

The Texas Department of Transportation (department) proposes new §23.13, concerning links to community web sites from rest areas and travel information centers.

EXPLANATION OF PROPOSED NEW SECTION

Section 23.13(a) describes the purpose of the section, which is to establish policies and procedures governing the participation of communities and the approval by the department of web sites that may link to the department's wireless internet access web pages from rest areas and travel information centers.

Section 23.13(b) describes how a city or town may submit a request for approval of a web site link and requires contact information for two official representatives of the city or town.

Section 23.13(c) describes the department's approval process. First, the city or town must already be included on the Texas Official Travel Map. The subsection contains this restriction because the department is using the current travel map and its database of communities to develop the wi-fi maps that can be seen on the web site and because, typically, a location that is not on the travel map has few amenities for a traveler. Second, to help ensure consistency and accuracy, the web site must be considered the official site of the city, town, or region, and be advertised as the official site in the communities' tourism information.

Section 23.13(d) defines the restrictions related to a web site. The purpose of linking to web sites is to provide travel and tourism information to the traveling public and to promote the positive attributes of the state. Accordingly, subjects for web site content that include sexually-oriented products or services will not be considered, nor will web site information that discriminates against individuals on the basis of race, color, creed, religion, sex, or national origin.

To ensure the integrity of the program, §23.13(e) describes the procedures for removal of the web site link based on the department's receipt of three or more consumer complaints concerning inaccurate information or information prohibited under §23.13(d).

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the new section as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section. There are no anticipated economic costs for persons required to comply with the section as proposed.

Doris Howdeshell, Director, Travel Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT

Ms. Howdeshell has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be to provide information to the traveling public about the cities and towns throughout Texas, particularly the smaller communities located near the rest areas and travel information centers. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new section may be submitted to Doris Howdeshell, Director, Travel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on December 12, 2005.

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§23.13. Links to Community Web Sites from Rest Areas and Travel Information Centers.

(a) Purpose. In furtherance of the department's statutory responsibility to encourage travel to and within Texas, this section establishes the policies and procedures governing the approval of community web sites linking to the department's wireless internet access web pages from a department rest area or travel information center.

(b) Request. A city or town may submit to the department, in writing or on-line, a request for approval of a web site url address link. The request must include contact information for two official representatives of the city or town.

(c) Approval. The department will approve the link if:

(1) the city or town is included on the Texas Official Travel Map; and

(2) the web site is considered the official site of the city, town, or region and is advertised as the official site in the communities' tourism information.

(d) Restrictions. The web site of the city or town must not:

(1) contain sexually-oriented products or services; or

(2) include information that discriminates against individuals on the basis of race, color, creed, religion, sex, or national origin.

(e) Removal. The director, or the director's designee, may remove the web site link based on the department's receipt of three or more consumer complaints concerning content that is not in compliance with subsection (d) of this section or inaccurate information. The department will send a written notice of noncompliance to the city or town affected. If the director, or the director's designee, determines the complaints are valid, and they remain unresolved after 90 days, the department will remove the link from the web pages. A city or town may appeal the removal to the department's executive director, or the executive director's designee, not below the level of division director, whose decision is final.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

The Texas Department of Transportation (department) proposes amendments to §§28.11, 28.14, 28.15, 28.92, and new Subchapter H, Chambers County Permits, §§28.100-28.102, concerning oversize and overweight vehicles and loads.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS

The proposed amendments and new sections are necessary to implement the provisions of House Bill 1044, House Bill 2438, and Senate Bill 1641, 79th Legislature, Regular Session, 2005, and to clarify existing information.

House Bill 1044 amended Transportation Code, Chapter 623, by adding §623.250 to authorize Chambers County, Texas, to issue permits for the movement of loaded oversize/overweight vehicles weighing up to 100,000 pounds only on Farm-to-Market Road 1405 and the frontage road of State Highway 99 located in the Cedar Crossing Business Park.

House Bill 2438 amended Transportation Code, Chapter 623, by repealing §623.093(d) removing the requirement for certain manufactured housing permit applications to be accompanied by proof that ad valorem taxes have been paid.

Senate Bill 1641 amended Transportation Code, Chapter 623, by extending the expiration date of the Port of Brownsville Permit Program defined in §623.219.

Additional amendments are proposed to clarify escort vehicle requirements to ensure consistency in escort vehicle equipment. Amendments to surety bond requirements are proposed to ensure that motor carriers hauling oversize/overweight loads are in compliance with motor carrier registration requirements.

Section 28.11. General Oversize/Overweight Permit Requirements and Procedures.

Proposed changes to §28.11(b)(1), clarify when a surety bond is and is not acceptable in lieu of motor carrier registration when applying for an oversize/overweight permit. This will assist in ensuring that motor carriers hauling oversize/overweight loads are in compliance with financial responsibility requirements. Section 28.11(b)(1) states that a surety bond can only be used if the entity is not required to register as a motor carrier. This amendment will help ensure the safety of the traveling public and will help ensure the integrity of the highway infrastructure.

Proposed changes to §28.11(k)(7)(A), state that escort vehicles must be a single unit within a specific weight range. This addition will help clarify what vehicle type can and cannot be used as an escort vehicle. Section 28.11(k)(7)(C) requires escort vehicles to display sign(s) with "OVERSIZE LOAD" or "WIDE LOAD"; "WIDE LOAD" has been added to allow for consistency in industry standards. Section 28.11(k)(7)(D) currently requires the escort vehicle to maintain two-way "radio" communications; "radio" has been removed to allow for other means of communication, such as cell phone. These amendments clarify the equipment requirements for escort vehicles assisting with the transport of oversize/overweight loads. These amendments will help ensure the safety of the traveling public.

Section 28.14. Manufactured Housing, and Industrialized Housing and Building Permits.

Proposed amendments to §28.14(b)(3) comply with House Bill 2438, 79th Legislature, Regular Session, 2005, which repealed §623.093(d), eliminating the requirement for certain manufactured housing permit applications to be accompanied by proof that ad valorem taxes have been paid. This repeal will allow the department to more effectively and efficiently administer Transportation Code Chapter 623, Subchapter E.

Proposed amendments to §28.14(f)(4)(A)-(D) and §28.14(f)(6) clarify the equipment requirements for escort vehicles assisting with the transport of manufactured housing. These amendments are added for consistency to ensure that all escort vehicles meet the same general requirements.

Section 28.15. Portable Building Unit Permits.

Proposed amendments to §28.15(f)(3)(D) and §28.15(f)(4) clarify the equipment requirements for escort vehicles assisting with the transport of portable buildings. These amendments are added for consistency to ensure that all escort vehicles meet the same general requirements.

Section 28.92 Permit Issuance Requirements and Procedures.

Proposed amendments to §28.92(b)(3) define reporting requirements for the Port of Brownsville Permit Program. This requires the permitting authority to provide monthly and annual reports. This will ensure compliance with Transportation Code, §623.215.

Proposed amendment to §28.92(h)(7) extends the expiration date of the Port of Brownsville Permit Program to June 1, 2009, to ensure compliance with Senate Bill 1641, 79th Legislature, Regular Session, 2005.

Subchapter H. Chambers County Permits.

Proposed amendments to Chapter 28 include the addition of Subchapter H, to comply with the requirements of House Bill 1044, 79th Legislature, Regular Session, 2005. This subchapter was developed to be consistent with similar programs previously established.

Proposed addition of §28.100 defines the purpose of Subchapter H, which allows Chambers County, Texas, to issue permits for the movement of loaded oversize/overweight vehicles weighing up to 100,000 pounds only on Farm-to-Market Road 1405 and the frontage road of State Highway 99 located in the Cedar Crossing Business Park.

Proposed addition of §28.101 defines the responsibilities of Chambers County, Texas and the department for the implementation and oversight of the Chambers County Permit Program. Areas of responsibility included in the proposed addition are (1) surety bond; (2) verification of permits; (3) training; (4) accounting; (5) audits; (6) revocation of authority to issue permits; (7) fees; (8) maintenance contract; and (9) reporting. These areas were developed to be in compliance with Transportation Code, Chapter 623, Subchapter M and to be consistent with similar programs previously established.

Proposed addition of §28.102 establishes the permit issuance requirements and procedures that Chambers County, Texas must follow as part of the Chambers County Permit Program. Requirements and procedures included in the proposed addition are (1) permit application; (2) permit issuance; (3) maximum permit weight limits; (4) vehicles exceeding weight limits; (5) registration; (6) travel conditions; (7) daylight and night movement restrictions; and (8) restrictions. These areas were developed to be in compliance with Transportation Code, Chapter 623, Subchapter M and to be consistent with similar programs previously established.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments and new sections as proposed are in effect, there will be minimal fiscal implications for state or local governments as a result of enforcing or administering the amendments and new section. The fiscal impact is due to rule change mandated by recently enacted legislation repealing Transportation Code, §623.093(d), which requires forms and Internet revisions. There will also be a minimal fiscal impact as a result of authorizing Chambers County to issue oversize and overweight vehicle permits. The cost of processing the permits and maintaining the effected roads will be offset by the permit fees collected by Chambers County. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Carol Davis, Director, Motor Carrier Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new sections.

PUBLIC BENEFIT

Ms. Davis has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new sections will be convenience and improved public safety. There will be no adverse economic effect on small businesses.

SUBCHAPTER B. GENERAL PERMITS

43 TAC §§28.11, 28.14, 28.15

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapters 623, which authorizes the department to administer the provisions of the laws governing the issuance of permits for the movement of oversize and overweight vehicles and loads.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.215, and §623.250.

§28.11. General Oversize/Overweight Permit Requirements and Procedures.

(a) Purpose and scope. This section contains general requirements relating to oversize/overweight permits, including single trip permits. Specific requirements for each type of specialty permit are provided for in this chapter.

(b) Prerequisites to obtaining an oversize/overweight permit. Unless exempted by law or this chapter, the following requirements must be met prior to the issuance of an oversize/overweight permit.

(1) Commercial motor carrier registration or surety bond. Prior to obtaining an oversize/overweight permit, an applicant permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, must be registered as a commercial motor carrier under Chapter 18 of this title (relating to Motor Carriers) or, if not required to obtain a motor carrier registration, file a surety bond with the department as described in subsection (n) of this section [~~in lieu of commercial motor carrier registration, file a surety bond with the department as described in subsection (n) of this section~~].

(2) Vehicle registration. A vehicle registered with a permit plate will not be issued an oversize/overweight permit under this subchapter. A permitted vehicle operating under this subchapter must be registered with one of the following types of vehicle registration:

(A) current Texas license plates that indicate the permitted vehicle is registered for maximum legal gross weight or the maximum weight the vehicle can transport;

(B) Texas temporary registration;

(C) current out of state license plates that are apportioned for travel in Texas; or

(D) foreign commercial vehicles registered under Texas annual registration.

(c) - (j) (No change.)

(k) Escort vehicle requirements. Escort vehicle requirements are provided to facilitate the safe movement of permitted vehicles and to protect the traveling public during the movement of permitted vehicles. A permittee must provide for escort vehicles and law enforcement assistance when required by the MCD. The requirements in this subsection do not apply to the movement of manufactured housing, portable building units, or portable building compatible cargo. Escort vehicle requirements for the movement of manufactured housing are described in §28.14 of this subchapter (relating to Manufactured Housing, and Industrialized Housing and Building Permits). Escort vehicle requirements for the movement of portable building units and portable building compatible cargo are described in §28.15 of this subchapter (relating to Portable Building Unit Permits).

(1) General.

(A) Applicability. The operator of an escort vehicle shall, consistent with applicable law, warn the traveling public when:

(i) a permitted vehicle must travel over the center line of a narrow bridge or roadway;

(ii) a permitted vehicle makes any turning movement that will require the permitted vehicle to travel in the opposing traffic lanes;

(iii) a permitted vehicle reduces speed to cross under a low overhead obstruction or over a bridge;

(iv) a permitted vehicle creates an abnormal and unusual traffic flow pattern; or

(v) in the opinion of MCD, warning is required to ensure the safety of the traveling public or safe movement of the permitted vehicle.

(B) Law enforcement assistance. Law enforcement assistance may be required by the MCD to control traffic when a permitted vehicle is being moved within the corporate limits of a city, or at such times when law enforcement assistance would provide for the safe movement of the permitted vehicle and the traveling public.

(C) Obstructions. It is the responsibility of the permittee to contact utility companies, telephone companies, television cable companies, or other entities as they may require, when it is necessary to raise or lower any overhead wire, traffic signal, street light, television cable, sign, or other overhead obstruction. The permittee is responsible for providing the appropriate advance notice as required by each entity.

(2) Escort requirements for overwidth loads. Unless an exception is granted by the MCD, based on a route and traffic study, an overwidth load must:

(A) have a front escort vehicle if the width of the load exceeds 14 feet, but does not exceed 16 feet, when traveling on a two lane roadway;

(B) have a rear escort vehicle if the width of the load exceeds 14 feet, but does not exceed 16 feet, when traveling on a roadway of four or more lanes; and

(C) have a front and a rear escort vehicle for all roads, when the width of the load exceeds 16 feet.

(3) Escort requirements for overlength loads. Unless an exception is granted by the MCD, based on a route and traffic study, overlength loads must have:

(A) a front escort vehicle when traveling on a two lane roadway if the vehicle exceeds 110 feet overall length, but does not exceed 125 feet overall length;

(B) a rear escort vehicle when traveling on a multi-lane highway if the vehicle exceeds 110 feet overall length, but does not exceed 125 feet overall length; and

(C) a front and rear escort vehicle at all times if the permitted vehicle exceeds 125 feet overall length.

(4) Escort requirements for overheight loads. Unless an exception is granted by the MCD, based on a route and traffic study, overheight loads must have:

(A) a front escort vehicle equipped with a height pole to accurately measure overhead obstructions for any permitted vehicle that exceeds 17 feet in height; and

(B) a front and rear escort vehicle for any permitted vehicle exceeding 18 feet in height.

(5) Escort requirements for permitted vehicles exceeding legal limits in more than one dimension. When a load exceeds more than one dimension that requires an escort under this subsection, front and rear escorts will be required unless an exception is granted by the MCD. For example, under this subsection one escort is required for a load exceeding 14 feet in width, and one escort is required for a load exceeding 110 feet in length. In the case of a permitted vehicle that exceeds both 14 feet in width and 110 feet in length, both front and rear escorts are required.

(6) Escort requirements for convoys. Convoys must have a front escort vehicle and a rear escort vehicle on all highways at all times.

(7) General equipment requirements. The following special equipment requirements apply to permitted vehicles and escort vehicles that are not motorcycles.

(A) An escort vehicle must be a single unit with a gross vehicle weight (GVW) of not less than 1,000 pounds nor more than 10,000 pounds.

(B) An escort vehicle must be equipped with two flashing amber lights or one rotating amber beacon of not less than eight inches in diameter, affixed to the roof of the escort vehicle, which must be visible to the front, sides, and rear of the escort vehicle while actively engaged in escort duties for the permitted vehicle.

(C) [~~(B)~~] An escort vehicle must display a sign, on either the roof of the vehicle, or the front and [~~or~~] rear of the vehicle, with the words "OVERSIZE LOAD [~~.~~]" or "WIDE LOAD." The sign must be visible from the front and rear of the vehicle while escorting the permitted load. The sign must meet the following specifications:

(i) at least five feet, but not more than seven feet in length, and at least 12 inches, but not more than 18 inches in height;

(ii) the sign must have a yellow background with black lettering;

(iii) letters must be at least eight inches, but not more than 10 inches high with a brush stroke at least 1.41 inches wide; and

(iv) the sign must be visible from the front or rear of the vehicle while escorting the permitted vehicle, and the signs must not be used at any other time.

(D) [~~(C)~~] An escort vehicle must maintain two-way [~~radio~~] communications with the permitted vehicle and other escort vehicles involved with the movement of the permitted vehicle.

(E) [~~(D)~~] Warning flags must be either red or orange fluorescent material, at least 12 inches square, securely mounted on a staff or securely fastened by at least one corner to the widest extremities of an overwidth permitted vehicle, and at the rear of an overlength permitted vehicle or a permitted vehicle with a rear overhang in excess of four feet.

(8) Equipment requirements for motorcycles.

(A) An official law enforcement motorcycle may be used as a primary escort vehicle for a permitted vehicle traveling within the limits of an incorporated city, if the motorcycle is operated by a highway patrol officer, sheriff, or duly authorized deputy, or municipal police officer.

(B) An escort vehicle must maintain two-way [~~radio~~] communications with the permitted vehicle and other escort vehicles involved with the movement of the permitted vehicle.

(l) - (n) (No change.)

§28.14. Manufactured Housing, and Industrialized Housing and Building Permits.

(a) General information.

(1) A manufactured home that exceeds size limits for motor vehicles as defined by Transportation Code, Chapter 621, Subchapters B and C, must obtain a permit from the department.

(2) Pursuant to Transportation Code, Chapter 623, Subchapter E, a permit may be issued to persons registered as manufacturers, installers, or retailers with the Texas Department of Housing and Community Affairs or motor carriers registered with the department under Transportation Code, Chapter 643.

(3) The department may issue a permit to the owner of a manufactured home provided that:

(A) the same owner is named on the title of the manufactured home and towing vehicle;

(B) or the owner presents a lease showing that the owner of the manufactured home is the lessee of the towing vehicle.

(b) Application for permit.

(1) The applicant must complete the application and shall include the manufactured home's HUD label number, Texas seal number, or the complete identification number or serial number of the manufactured home, and the overall width, height, and length of the home and the towing vehicle in combination. If the manufactured home is being moved to or from a site in this state where it has been, or will be, occupied as a dwelling, the permit must also show the name of the owner of the home, the location from which the home is being moved, and the location to which the home is being delivered.

(2) Applications for industrialized housing and building permits, and permits for manufactured housing not being transported from the manufacturer or retailer pursuant to the original sale, exchange, or lease-purchase of the manufactured home to a consumer, shall be submitted in accordance with §28.11(c) of this subchapter (relating to General Oversize/Overweight Permit Requirements and Procedures).

~~[(3) An application for a permit to move a manufactured home not described under paragraph (2) of this subsection must be accompanied by:]~~

~~[(A) a written statement from the chief appraiser of the county appraisal district, or by interlocal agreement, the county tax assessor-collector, stating that no unpaid ad valorem taxes have been reported as due by any taxing unit for which the district appraises property;]~~

~~[(B) evidence from the county appraiser, or by interlocal agreement, the county tax assessor-collector, for the county in which the home is located showing that the manufactured home was moved into the county after January 1 of the current year;]~~

~~[(C) a certificate from the appraisal district, or by interlocal agreement, the county tax assessor-collector, for the county in which the manufactured home is located that states the owner of the manufactured home or other person has provided information sufficient to list the manufactured home in the supplemental appraisal records of that district; or]~~

~~[(D) a copy of a writ of possession for the manufactured home, issued by a court of competent jurisdiction.]~~

(c) Permit issuance.

(1) Permit issuance is subject to the requirements of §28.11(e)(4) of this subchapter (relating to General Oversize/Overweight Permit Requirements and Procedures).

(2) Amendments can only be made to change intermediate points between the origination and destination points listed on the permit.

(d) Payment of permit fee. The cost of the permit is $20, payable in accordance with §28.11(f) of this subchapter (relating to General Oversize/Overweight Permit Requirements and Procedures).

(e) Permit provisions and conditions.

(1) The overall combined length of the manufactured home and the towing vehicle includes the length of the hitch or towing device.

(2) The height is measured from the roadbed to the highest elevation of the manufactured home.

(3) The width of a manufactured home includes any roof or eaves extension or overhang on either side.

(4) A permit will be issued for a single continuous movement not to exceed five days.

(5) Movement must be made during daylight hours only and may be made on any day except New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(6) The department may limit the hours for travel on certain routes because of heavy traffic conditions.

(7) The department will publish any limitations on movements during the national holidays listed in this subsection, or any limitations during certain hours of heavy traffic conditions, and will make such publications available to the public prior to the limitations becoming effective.

(8) The permit will contain the route for the transportation of the manufactured home from the point of origin to the point of destination.

(9) The route for the transportation must be the most practical route as described in §28.11(e) of this subchapter (relating to General Oversize/Overweight Permit Requirements and Procedures), except where construction is in progress and the permitted vehicle's dimensions exceed the construction restrictions as published by the department, or where bridge or overpass width or height would create a safety hazard.

(10) The department will publish annually a map or list of all bridges or overpasses which, due to height or width, require an escort vehicle to stop oncoming traffic while the manufactured home crosses the bridge or overpass.

(11) A permittee may not transport a manufactured home with a void permit; a new permit must be obtained.

(f) Escort requirements.

(1) A manufactured home exceeding 12 feet in width must have a rotating amber beacon of not less than eight inches in diameter mounted somewhere on the roof at the rear of the manufactured home, or may have two five-inch flashing amber lights mounted approximately six feet from ground level at the rear corners of the manufactured home. The towing vehicle must have one rotating amber beacon of not less than eight inches in diameter mounted on top of the cab. These beacons or flashing lights must be operational and luminiferous during any permitted move over the highways, roads, and streets of this state.

(2) A manufactured home with a width exceeding 16 feet but not exceeding 18 feet must have a front escort vehicle on two-lane roadways and a rear escort vehicle on roadways of four or more lanes.

(3) A manufactured home exceeding 18 feet in width must have a front and a rear escort on all roadways at all times.

(4) The escort vehicle must [~~have~~]:

(A) have one red 16 inch square flag mounted on each of the four corners of the vehicle;

(B) have a sign mounted on the front and rear of the vehicle displaying the words "WIDE LOAD" in black letters at least eight inches high with a brush stroke at least 1.41 inches wide against a yellow background; [~~and~~]

(C) have an amber light or lights, visible from both front and rear, mounted on top of the vehicle in one of the following configurations:

(i) two simultaneously flashing lights or

(ii) one rotating beacon of not less than eight inches in diameter; and

(D) maintain two-way communications with the permitted vehicle and other escort vehicles involved with the movement of the permitted vehicle.

(5) Two transportable sections of a multi-section manufactured home, or two single section manufactured homes, when towed together in convoy, may be considered one home for purposes of the escort vehicle requirements, provided the distance between the two units does not exceed 1,000 feet.

(6) An escort vehicle must comply with the requirements in §28.11(k)(1) and §28.11(k)(7)(A) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

§28.15. Portable Building Unit Permits.

(a) General information.

(1) A vehicle or vehicle combination transporting one or more portable building units and portable building compatible cargo that exceed legal length or width limits set forth by Transportation Code, Chapter 621, Subchapters B and C, may obtain a permit under Transportation Code, Chapter 623, Subchapter F.

(2) In addition to the fee required by subsection (d)(1), the department shall collect an amount equal to any fee that would apply to the movement of cargo exceeding any applicable width limits, if such cargo were moved in a manner not governed by this section.

(b) Application for permit. Applications shall be made in accordance with §28.11(c) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Permit issuance. Permit issuance is subject to the requirements of §28.11(b)(1)(A) and (B) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures), with the exception of §28.11(k) of this title, concerning escort requirements.

(d) Payment of permit fee. The cost of the permit is $7.50, with all fees payable in accordance with §28.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures). All fees are non-refundable.

(e) Permit provisions and conditions.

(1) A portable building unit may only be issued a single-trip permit.

(2) Portable building units may be loaded end-to-end to create an overlength permit load, provided the overall length does not exceed 80 feet.

(3) Portable building units must not be loaded side-by-side to create an overwidth load, or loaded one on top of another to create an overheight load.

(4) Portable building units must be loaded in a manner that will create the narrowest width for permit purposes and provide for greater safety to the traveling public.

(5) The permit will be issued for a single continuous movement from the origin to the destination for an amount of time necessary to make the move, not to exceed 10 consecutive days.

(6) Movement of the permitted vehicle must be made during daylight hours only.

(7) A permittee may not transport portable building units or portable building compatible cargo with a void permit; a new permit must be obtained.

(f) Escort requirements.

(1) A portable building unit or portable building compatible cargo with a width exceeding 16 feet but not exceeding 18 feet must have a front escort vehicle on two-lane roadways and a rear escort vehicle on roadways of four or more lanes.

(2) A portable building unit or portable building compatible cargo exceeding 18 feet in width must have a front and a rear escort on all roadways at all times.

(3) The escort vehicle must [~~have~~]:

(A) have one red 16 inch square flag mounted on each of the four corners of the vehicle;

(B) have a sign mounted on the front and rear of the vehicle displaying the words "WIDE LOAD" in black letters at least eight inches high with a brush stroke at least 1.41 inches wide against a yellow background;

(C) have an amber light or lights, visible from both front and rear, mounted on top of the vehicle and which must be two simultaneously flashing lights or one rotating beacon of not less than eight inches in diameter; and

(D) maintain two-way communications with the permitted vehicle and other escort vehicles involved with the movement of the permitted vehicle.

(4) An escort vehicle must comply with the requirements in §28.11(k)(1) and §28.11(k)(7)(A) [~~(7)~~] of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504927
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 463-8630

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SUBCHAPTER G. PORT OF BROWNSVILLE PORT AUTHORITY PERMITS

43 TAC §28.92

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapters 623, which authorizes the department to administer the provisions of the laws governing the issuance of permits for the movement of oversize and overweight vehicles and loads.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.215, and §623.250.

§28.92. Permit Issuance Requirements and Procedures.

(a) Permit application. Application for a permit issued under this subchapter shall be in a form approved by the department, and shall at a minimum include:

(1) the name of the applicant;

(2) date of issuance;

(3) signature of the director of the Port of Brownsville;

(4) a statement of the kind of cargo being transported;

(5) the maximum weight and dimensions of the proposed vehicle combination, including number of tires on each axle, tire size for each axle, distance between each axle, measured from center of axle to center of axle, and the specific weight of each individual axle when loaded;

(6) the kind and weight of each commodity to be transported, not to exceed loaded dimensions of 12' wide, 15'6" high, 110' long or 125,000 pounds gross weight;

(7) a statement of any condition on which the permit is issued;

(8) a statement that the cargo shall be transported over the most direct route using State Highway 48/State Highway 4 between the Gateway International Bridge and the Port of Brownsville, or using U.S. Highway 77/U.S. Highway 83 and State Highway 48/State Highway 4 between the Veterans International Bridge at Los Tomates and the Port of Brownsville;

(9) the name of the driver of the vehicle in which the cargo is to be transported;

(10) the location where the cargo was loaded; and

(11) the name of the specific Port of Brownsville employee issuing the permit.

(b) Permit issuance.

(1) General.

(A) The original permit must be carried in the vehicle for which it is issued.

(B) A permit is void when an applicant:

(i) gives false or incorrect information;

(ii) does not comply with the restrictions or conditions stated in the permit; or

(iii) changes or alters the information on the permit.

(C) A permittee may not transport an overdimension or overweight load with a voided permit.

(2) Payment of permit fee. The Port of Brownsville may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency.

(3) Reporting. Brownsville Port Authority shall provide monthly and annual reports to the department's Finance Division regarding all permits issued and all fees collected. The report must be in a format approved by the department.

(c) Maximum permit weight limits.

(1) An axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group to achieve the maximum permit weight for the group.

(2) Two or more consecutive axle groups must have an axle spacing of 12 feet or greater, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, in order for each group to be permitted for maximum permit weight.

(3) Maximum permit weight for an axle or axle group is based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle--25,000 pounds;

(B) two axle group--46,000 pounds;

(C) three axle group--60,000 pounds;

(D) four axle group--70,000 pounds;

(E) five axle group--81,400 pounds; or

(F) trunnion axles--60,000 pounds if;

(i) the trunnion configuration has two axles;

(ii) there are a total of 16 tires for a trunnion configuration; and

(iii) the trunnion axle as shown in the following diagram is 10 feet in width.

Figure: 43 TAC §28.92(c)(3)(F)(iii) (No change.)

(4) A permit issued under this subchapter does not authorize the vehicle to exceed manufacturer's tire load rating.

(d) Vehicles exceeding weight limits. Any vehicle exceeding weight limits outlined in subsection (c) of this section, shall apply directly to the department for an oversize or overweight permit in accordance with §28.11 of this chapter (relating to General Oversize/Overweight Permit Requirements and Procedures).

(e) Registration. Any vehicle or combination of vehicles permitted under this subchapter shall be registered in accordance with Transportation Code, Chapter 502.

(f) Travel conditions. Movement of a permitted vehicle is prohibited when visibility is reduced to less than 2/10 of one mile or the road surface is hazardous due to weather conditions such as rain, ice, sleet, or snow, or highway maintenance or construction work.

(g) Daylight and night movement restrictions. An oversize permitted vehicle may be moved only during daylight hours; however, an overweight only permitted vehicle may be moved at any time.

(h) Restrictions.

(1) Any vehicle issued a permit by the Port of Brownsville must be weighed on scales capable of determining gross vehicle weights and individual axle loads. For the purpose of ensuring the accuracy of the permit, the scales must be certified by the Texas Department of Agriculture or accepted by the United Mexican States.

(2) A valid permit and certified weight ticket must be presented to the gate authorities before the permitted vehicle shall be allowed to exit or enter the port.

(3) A copy of the certified weight ticket shall be retained by the Port of Brownsville and become a part of the official permit record subject to inspection by department personnel or Texas Department of Public Safety personnel.

(4) The owner of a vehicle permitted under this subchapter must be registered as a motor carrier in accordance with Transportation Code, Chapters 643 or 645, prior to the oversize or overweight permit being issued. The Port of Brownsville shall maintain records relative to this subchapter, which are subject to audit by department personnel.

(5) Permits issued by the Port of Brownsville shall be in a form prescribed by the department.

(6) The maximum speed for a permitted vehicle shall be 55 miles per hour or the posted maximum, whichever is less.

(7) This subchapter expires June 1, 2009 [~~2007~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504928
Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 463-8630

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SUBCHAPTER H. CHAMBERS COUNTY PERMITS

43 TAC §§28.100 - 28.102

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapters 623, which authorizes the department to administer the provisions of the laws governing the issuance of permits for the movement of oversize and overweight vehicles and loads.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.215, and §623.250.

§28.100. Purpose.

In accordance with Transportation Code, Chapter 623, Subchapter K, the commission may authorize Chambers County, Texas to issue permits for the movement of oversize and overweight vehicles and loads on Farm-to-Market Road 1405 and the frontage road of State Highway 99 located in the Cedar Crossing Business Park. This subchapter sets forth the requirements and applicable procedures for the issuance of permits by Chambers County for the movement of oversize and overweight vehicles.

§28.101. Responsibilities.

(a) Surety bond. Chambers County shall post a surety bond in the amount of $500,000 for the purpose of reimbursing the department for actual maintenance costs of Farm-to-Market Road 1405 and the frontage road of State Highway 99 located in the Cedar Crossing Business Park in the event that sufficient revenue is not collected from permits issued under this subchapter.

(b) Verification of permits. All permits issued by Chambers County shall be carried in the permitted vehicle. Chambers County shall provide access or a phone number for verification of permit authenticity by law enforcement or department personnel.

(c) Training. Chambers County shall secure any training necessary for personnel to issue permits under this subchapter. The department may provide assistance with training upon request by Chambers County.

(d) Accounting. The department shall develop accounting procedures related to permits issued under this subchapter for the purpose of revenue collections and any payment made to the department under subsection (h) of this section.

(e) Audits. The department may conduct audits of all permits issued by Chambers County semi-annually or upon direction by the executive director under this subchapter. In order to insure compliance, audits will at a minimum include a review of all permits issued, financial transaction records related to permit issuance, review of vehicle scale weight tickets and monitoring of personnel issuing permits under this subchapter.

(f) Revocation of authority to issue permits. If the department determines as a result of an audit that Chambers County is not complying with this subchapter, the executive director will issue a notice to Chambers County allowing 30 days to correct any non-compliance issue. If after 30 days it is determined that Chambers County is not in compliance, then the executive director may revoke Chambers County's authority to issue permits.

(1) Upon notification that its authority to issue permits under this subchapter has been revoked, Chambers County may appeal the revocation to the commission in writing.

(2) In cases where a revocation is being appealed, Chambers County's authority to issue permits under this subchapter shall remain in effect until the commission makes a final decision regarding the appeal.

(3) Upon revocation of authority to issue permits, termination of the maintenance contract, or expiration of this subchapter, all fees collected by Chambers County, with the exception of administrative costs already expended, shall be paid to the department.

(g) Fees. Fees collected under this subchapter shall be used solely to provide funds for the payments provided for under Transportation Code, §623.253, less administrative costs.

(1) The permit fee shall not exceed $80 per trip. Chambers County may retain up to 15% of such permit fees for administrative costs, and the balance of the permit fees shall be used to make payments to the department for maintenance of Farm-to-Market Road 1405 and the frontage road of State Highway 99 located in the Cedar Crossing Business Park.

(2) Chambers County may issue a permit and collect a fee for any vehicle or vehicle combination weighing up to 100,000 pounds, and with load dimensions not exceeding 12' wide, 16' high or 110' long, traveling only on Farm-to-Market Road 1405 and the frontage road of State Highway 99 located in the Cedar Crossing Business Park.

(h) Maintenance contract. Chambers County shall enter into a maintenance contract with the department for the maintenance of Farm-to-Market Road 1405 and the frontage road of State Highway 99 located in the Cedar Crossing Business Park.

(1) The maintenance contract shall provide for a system of payments from Chambers County to the department for all maintenance costs expended by the department to maintain Farm-to-Market Road 1405 and the frontage road of State Highway 99 located in the Cedar Crossing Business Park to the current level of service or pavement conditions. Maintenance shall include, but is not limited to, routine maintenance, preventive maintenance, and total reconstruction of the roadway and bridge structures as determined by the department to maintain the current level of service.

(2) Chambers County may make direct restitution to the department for actual maintenance costs from this fund in lieu of the department filing against the surety bond required in subsection (a) of this section, in the event that sufficient revenue is not collected.

(i) Reporting. Chambers County shall provide monthly and annual reports to the department's Finance Division regarding all per-

mits issued and fees collected. The report must be in a format approved by the department.

§28.102. Permit Issuance Requirements and Procedures.

(a) Permit application. Application for a permit issued under this subchapter shall be in a form approved by the department, and shall at a minimum include:

(1) the name of the applicant;

(2) date of issuance;

(3) signature of the designated agent of Chambers County;

(4) a statement of the kind of cargo being transported;

(5) the maximum weight and dimensions of the proposed vehicle combination, including number of tires on each axle, tire size for each axle, distance between each axle, measured from center of axle to center of axle, and the specific weight of each individual axle when loaded;

(6) the kind and weight of each commodity to be transported;

(7) a statement of any condition on which the permit is issued;

(8) a statement that the cargo shall be transported over the most direct route using only Farm-to-Market Road 1405 and the frontage road of State Highway 99 located in the Cedar Crossing Business Park;

(9) the name of the driver of the vehicle in which the cargo is to be transported;

(10) the location where the cargo was loaded;

(11) the date(s) on which movement authorized by the permit is allowed; and

(12) the name of the specific Chambers County employee issuing the permit.

(b) Permit issuance.

(1) General.

(A) The original permit must be carried in the vehicle for which it is issued.

(B) A permit is void when an applicant:

(i) gives false or incorrect information;

(ii) does not comply with the restrictions or conditions stated in the permit; or

(iii) changes or alters the information on the permit.

(C) A permittee may not transport an overdimension or overweight load with a voided permit.

(2) Payment of permit fee. Chambers County may determine acceptable methods of payment. All fees transmitted to the department must be in U.S. currency.

(c) Maximum permit weight limits.

(1) An axle group must have a minimum spacing of four feet, measuring from center of axle to center of axle, between each axle in the group, to achieve the maximum permit weight for the group.

(2) Two or more consecutive axle groups must have an axle spacing of 12 feet or greater, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, in order for each group to be permitted for maximum permit weight.

(3) Maximum permit weight for an axle or axle group is based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount;

(A) single axle--25,000 pounds;

(B) two axle group--46,000 pounds;

(C) three axle group--60,000 pounds;

(D) four axle group--70,000 pounds;

(E) five axle group--81,400 pounds;

(F) trunnion axles--60,000 pounds if:

(i) the trunnion configuration has two axles;

(ii) there are a total of 16 tires for a trunnion configuration; and

(iii) the trunnion axle as shown in the following diagram is 10 feet in width.

Figure: 43 TAC §28.102(c)(3)(F)(iii)

(4) A permit issued under this subchapter does not authorize the vehicle to exceed manufacturer's tire load rating.

(d) Vehicles exceeding weight limits. Any vehicle exceeding weight limits outlined in subsection (c) of this section, shall apply directly to the department for an oversize or overweight permit in accordance with §28.11 of this chapter (relating to General Oversize/Overweight Permit Requirements and Procedures).

(e) Registration. Any vehicle or combination of vehicles permitted under this subchapter shall be registered in accordance with Transportation Code, Chapter 502.

(f) Travel conditions. Movement of a permitted vehicle is prohibited when visibility is reduced to less than 2/10 of one mile or the road surface is hazardous due to weather conditions such as rain, ice, sleet, or snow, or highway maintenance or construction work.

(g) Daylight and night movement restrictions. An oversize permitted vehicle may be moved only during daylight hours; however, an overweight only permitted vehicle may be moved at any time.

(h) Restrictions.

(1) Any vehicle issued a permit by Chambers County must be weighed on scales capable of determining permitted loaded gross vehicle weights and individual axle loads. For the purpose of ensuring the accuracy of the permit, the scales must be certified by the Texas Department of Agriculture.

(2) A copy of the certified weight ticket shall be retained by Chambers County and become a part of the official permit record subject to inspection by department personnel or Texas Department of Public Safety personnel.

(3) The owner of a vehicle permitted under this subchapter must be registered as a motor carrier in accordance with Transportation Code, Chapters 643 or 645, prior to the oversize or overweight permit being issued. Chambers County shall maintain records relative to this subchapter, which are subject to audit by department personnel.

(4) Permits issued by Chambers County shall be in a form prescribed by the department.

(5) The maximum speed for a permitted vehicle shall be 55 miles per hour or the posted maximum, whichever is less.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504929

Richard D. Monroe
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 11, 2005
For further information, please call: (512) 463-8630

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 102. HEALTH SPAS

SUBCHAPTER D. SECURITY

1 TAC §102.32

The Office of the Secretary of State withdraws proposed new §102.32 which appeared in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5889). A new proposed §102.32 is published elsewhere in this issue of the *Texas Register*.

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TRD-200504879
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Effective date: October 28, 2005
For further information, please call: (512) 475-0775

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER H. LICENSE SUSPENSION

1 TAC §§55.202 - 55.205, 55.207, 55.208, 55.212, 55.214, 55.215

The Office of the Attorney General adopts amendments to Subchapter H, §§55.202 - 55.205, 55.207, 55.208, 55.212, 55.214, 55.215, concerning license suspension, without changes to the proposed text as published in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6013). The amendments effectuate the interagency contract between the Office of the Attorney General and the State Office of Administrative Hearings to delegate functions for license suspension cases for non-payment of child support.

Section 55.202(6) clarifies that the Office of the Attorney General is the Title IV-D agency.

Section 55.202(7) adds a new term and definition: Administrative Law Judge.

Section 55.203 revises the forms used in license suspension.

Section 55.204(a), (b), and (c) changes Office of the Administrative Law Judge to Office of the Attorney General.

Section 55.205(a) changes Office of the Administrative Law Judge to Office of the Attorney General.

Section 55.205(c) adds a Number of Copies provision.

Section 55.205(d) clarifies the process for Issuance of Notice of Filing of Petition to Suspend License.

Section 55.205(e) and (f) are renumbered.

Section 55.205(g) is added to clarify that if the petitioner is not the Title IV-D agency, they must provide copies of the packet and all pleadings and documents.

Section 55.207(b) deletes Office of the Administrative Law Judge and adds an administrative law judge from the State Office of Administrative Hearings.

Section 55.208(a) deletes Office of the Administrative Law Judge and adds an administrative law judge from the State Office of Administrative Hearings.

Section 55.212 changes Office of the Administrative Law Judge to Office of the Attorney General.

Section 55.214(a) and (b) deletes Title IV-D agency and adds Coordinator.

Section 55.215(b) deletes obsolete language that expired in 1996.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of Texas Family Code §232.016.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504940
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Effective date: November 17, 2005
Proposal publication date: September 23, 2005
For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 155. RULES OF PROCEDURES

1 TAC §§155.23, 155.29, 155.30, 155.55, 155.59

The State Office of Administrative Hearings (SOAH) adopts amendments to §155.55, concerning Default Proceedings *with changes* to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4273).

SOAH adopts amendments to §§155.23, concerning Filing Documents or Serving Documents on the Judge; 155.29, concerning Pleadings; and 155.59, concerning Proposal for Decision; and adopts new §155.30, concerning Motions *without changes* to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4273), and will not be republished.

The change to the proposed amendment in §155.55 is in subsection (e), which reads as follows: "The judge has the discretion to determine whether proper and adequate notice under Tex. Gov't Code, Chapter 2001 and §155.27 of this title (relating to Notice of Hearing) was given, and whether return to the agency for in-

formal disposition is appropriate." SOAH is eliminating the last clause of that sentence and ending the sentence at "given."

In general, the amendments and the new section are adopted to clarify procedures and deadlines and to make the rules easier to use. SOAH's adopted amendments update, streamline, and improve the uniform procedural rules it promulgated pursuant to Texas Government Code 2003.050. The adopted amendments will further enhance SOAH's ability to provide for an efficient, just, fair, and impartial adjudication of the rights of the parties under a consistent set of procedures.

Specifically, the reasons for adopting the amendments are as follows: Section 155.23 is amended to clarify that documents filed by facsimile after 5:00 p.m. on a business day will be deemed to have been filed on the next business day. The amendment makes the rule consistent with the provisions of §155.25(d)(4) (concerning Service of Documents on Parties). Section 155.29 is amended to apply only to pleadings and deletes provisions governing motions. New §155.30 is adopted to create a separate rule governing motions; the new section's provisions have been removed from §155.29 and the requirements for motions clarified. Section 155.55 is amended to clarify and simplify the mechanisms by which cases in which a respondent fails to appear, or file a required answer may be handled. Current subsection (d) is deleted as substantially duplicative and unnecessary in light of the revision of current subsection (f) (subsection (e) in this revision). The revision of current subsection (f) (subsection (e) in this revision) does not, and is not intended to, preclude a referring agency from disposing of its cases on a default basis under the referring agency's rules. Section 155.59 is amended to establish rebuttable presumptions about dates of service of proposals for decision so that the judge and parties may better calculate the dates by which exceptions must be filed.

No comments were received regarding the adoption of the amendments and new rule. However, SOAH received comments from one agency after the comment period ended, and is revising the amendment to §155.55 to address the commenter's concerns about SOAH's authority to determine whether returning a case to the referring agency for informal disposition is appropriate.

The amendments and new rule are adopted under Government Code, Chapter 2003, §2003.050, which authorizes SOAH to conduct contested case hearings and requires adoption of procedural rules for hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

Government Code, Chapters 2001 and 2003 are affected by the amendments and new rule.

§155.55. Default Proceedings.

(a) If a party who does not have the burden of proof fails to appear for hearing, the judge may proceed in that party's absence on a default basis. In the proposal for decision or final order, the factual allegations listed in the notice of hearing will be deemed admitted.

(b) Any default proceeding under this section requires adequate proof of the following:

(1) proper notice under Tex. Gov't Code, Chapter 2001 and §155.27 of this title (relating to Notice of Hearing) was provided to the defaulting party; and

(2) such notice included a disclosure, in at least twelve-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against the defaulting party that fails to appear at hearing.

(c) In the alternative, when it is not possible to prove actual receipt of notice, a hearing may proceed on a default basis if:

(1) the referring agency's statute or rules authorize service of the notice of hearing by sending it to the party's last known address as shown by the referring agency's records; and

(2) there is credible evidence that the notice of hearing was sent by first class mail to such address.

(d) No later than ten days after the hearing, if a dismissal, proposal for decision, or a final order has not been issued, a party may file a motion to set aside a default and reopen the record. The judge may grant the motion, set aside the default, and reopen the hearing for good cause shown.

(e) Upon the failure of a respondent to appear at the hearing or to file a timely written response or answer required by the referring agency's rules, the judge may grant a continuance or dismissal from SOAH's docket in order to allow the referring agency to dispose of the case on a default basis under the referring agency's rules, or may issue a default proposal for decision or order. The judge has the discretion to determine whether proper and adequate notice under Tex. Gov't Code, Chapter 2001 and §155.27 of this title (relating to Notice of Hearing) was given.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504937
Cathleen Parsley
General Counsel
State Office of Administrative Hearings
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Proposal publication date: July 29, 2005
For further information, please call: (512) 475-4931

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CHAPTER 157. TEMPORARY ADMINISTRATIVE LAW JUDGES

1 TAC §157.1

The State Office of Administrative Hearings (SOAH) adopts amendments to §157.1, concerning Temporary Administrative Law Judges, which will bring the section in line with SOAH's needs and the state bidding requirements. The amendment is adopted *without changes* to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4276), and will not be republished.

The reasons for adopting the amendments are as follows: Section 157.1 is amended to require that persons seeking to serve as temporary administrative law judges have five years experience in administrative law. That experience may be the result of conducting hearings under the Administrative Procedure Act, practicing administrative law, or a combination thereof. The amendment also: (1) deletes as a component for consideration by the chief judge the recommendation of parties, and (2) re-

quires those seeking to be temporary administrative law judges to comply with applicable state bidding requirements.

No comments were received regarding the adoption of the amendments.

The amended rule is adopted under Government Code, Chapter 2003, §2003.050, which authorizes SOAH to conduct contested case hearings and requires adoption of procedural rules for hearings, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

Government Code, Chapters 2001 and 2003 are affected by the amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathleen Parsley
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State Office of Administrative Hearings
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CHAPTER 163. ARBITRATION PROCEDURES FOR CERTAIN ENFORCEMENT ACTIONS OF THE TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES

1 TAC §§163.1 - 163.7, 163.9, 163.11, 163.13, 163.15, 163.17, 163.19, 163.21, 163.25, 163.27, 163.29, 163.31, 163.33, 163.37, 163.39, 163.41, 163.59, 163.61, 163.65, 163.67, 163.69

The State Office of Administrative Hearings (SOAH) adopts amendments to §§163.11, concerning Selection of Arbitrator; 163.21, concerning Costs of Arbitration; 163.25, concerning Electronic Record; and 163.61, concerning Order. These amendments are adopted *with changes* to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4277). The only changes made to the proposed text in these four sections were limited to minor punctuation and grammar corrections. SOAH adopts amendments to §§163.1, concerning Definitions; 163.3, concerning Election of Arbitration; 163.5, concerning Initiation of Arbitration; 163.7, concerning Changes of Claim; 163.9, concerning Filing and Service of Documents; 163.13, concerning Notice to and Acceptance by Arbitrator of Appointment; 163.15, concerning Disclosure Requirements and Challenge Procedure; 163.17, concerning Vacancies; 163.19, concerning Qualifications of Arbitrators; 163.27, concerning Interpreters; 163.29, concerning Duties of the Arbitrator; 163.31, concerning Communication of Parties with Arbitrator; 163.33, concerning Date, Time, and Place of Hearing; 163.37, concerning Public Hearings and Confidential Material; 163.39, concerning Preliminary Conference; 163.41, concerning Exchange and Filing of Information; 163.59, concerning Attendance Required; 163.65, concerning Clerical Error; and 163.67, concerning Appeal; and adopts new §§163.2, concerning Construction of this Chapter; 163.4, concerning Notice of Election of Arbitration; 163.6, concerning Jurisdictional Challenges; and 163.69, concerning Other SOAH Rules of Procedure. These amendments are adopted *without changes* to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4277) and will not be republished.

In general, the rules have been modified to substitute job titles now in use under SOAH's new administrative structure, to delete unnecessary language, and to achieve parallel construction and consistency within this chapter and, as much as practicable, with Chapter 155 (Rules of Procedure) of this title, and Chapter 159 (Rules of Procedure for Administrative License Revocation Hearings) of this title. In particular, references to SOAH have been substituted for references to the Office; the word Code has been substituted for Tex. Health & Safety Code Ann.; references to DADS (the Department of Aging and Disability Services) have been substituted for DHS and the department; numerals have been spelled out, in accordance with *Harvard Blue Book* form; statutory and rules citations have been updated and rewritten to comport with the style recommended in *Texas Rules of Form*. Numbers and letters contained in subsections have been changed to be consistent with the format used in Chapter 155. Additionally, numerous rules, including §163.3 and §163.5, have been amended to reflect changes in the law effected by Acts 1997, 75th Leg., ch. 693, §2; Acts 1997, 75th Leg., ch. 1159, §1.02; Acts 1999, 76th Leg., ch. 1094, §§1, 2, 3, and 4; and Acts 1999, 76th Leg., ch. 1095, §1.

No comments were received regarding the adoption of the amendments and new rules.

The amendments and new rules are adopted under Health and Safety Code, Subchapter H, Chapter 242, §242.253, which requires that SOAH adopt rules governing the appointment of an arbitrator and the process of arbitration under that chapter; under Government Code, Chapter 2001, §2001.004 which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures; and under Government Code, Chapter 2003, §2003.050, which authorizes SOAH to conduct contested case hearings and requires adoption of hearings procedural rules.

Health and Safety Code, Chapter 242; the Government Code, Chapter 2003; and the Human Resources Code, Chapter 32 are affected by the amendments and new rules.

§163.11. Selection of Arbitrator.

(a) A master list of potential arbitrators will be maintained by SOAH and updated as deemed appropriate by the chief judge. The master list will be made up of individuals who have been determined by the chief judge to be qualified under §163.19 of this title (relating to Qualifications of Arbitrators). This list will be available to the public upon request to SOAH.

(b) The parties may agree upon an arbitrator qualified under this chapter and submit that individual's name with their initial statements.

(c) If the parties do not agree on an arbitrator who is willing and available to serve, SOAH will provide a list of potential arbitrators. The list of potential arbitrators in each case will be created by selecting individuals from the master list. In selecting these individuals, due regard will be given to the complexity of the dispute, the expertise needed to understand the dispute, the experience and training of the proposed

arbitrators, and the requests of the parties concerning the location of the hearing. SOAH will also consider any potential conflicts revealed in disclosure statements on file with SOAH.

(d) SOAH shall send each party an identical list of five or six persons qualified to serve as an arbitrator in the dispute within ten days after the due date for SOAH's receipt of the answering statement, or as soon thereafter as practicable.

(e) Any objections for cause pertaining to any name on the list shall be made in writing directed to the chief judge at SOAH within three days of receiving the list of potential arbitrators, with a copy served on all other parties. Such objections will be reviewed by the chief judge or his or her designee and acted upon within five days after the objection is received.

(f) Each party shall have ten days from the transmittal date to strike one name. The remaining names should be numbered in order of preference, if such preference exists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. It is not necessary for the parties to exchange the names of the candidates they strike, nor will those names be disclosed to the candidates.

(g) SOAH will notify the parties of the arbitrator appointed.

(h) Until an arbitrator has been appointed, the chief Judge may rule on pending matters, including dispositive motions.

(i) In cases where the facility is responsible for paying SOAH's costs and expenses, SOAH will require that an authorized representative of the facility provide an affidavit acknowledging the facility's responsibility and duty to pay SOAH's costs and expenses.

§163.21. Costs of Arbitration.

(a) An arbitrator's fees and expenses shall not exceed $500 per day for case preparation, pre-hearing conferences, hearings, preparation of the order, and any other required post-hearing work. Rates charged for less than one day must bear a reasonable relationship to the daily maximum.

(b) There may also be incidental expenses connected with an arbitration proceeding which may be charged in addition to the arbitrator's fees and expenses. If a party requests that an arbitration hearing be held outside of Austin, and the arbitrator agrees to hold the arbitration in that location, incidental expenses would include the cost of renting a room for the hearing and the arbitrator's travel expenses.

(c) In cases where arbitration is elected for actions occurring after January 1, 1998, the party that elects arbitration shall pay the cost of the arbitration.

§163.25. Electronic Record.

DADS shall make an electronic recording of the proceeding. If there is no stenographic record of the proceeding, the original recording or a copy will be provided to the arbitrator at the close of the proceeding if the arbitrator so requests. At the arbitrator's request, DADS shall also record prehearing conferences.

§163.61. Order.

(a) The arbitrator may enter any order that may be entered by DADS, board, commissioner, or court in relation to a dispute described in §163.3 of this title (relating to Opportunity to Elect Arbitration).

(b) The order shall be entered no later than the 60th day after the close of the arbitration hearing.

(c) The arbitrator shall base the order on the facts established in the arbitration proceeding, including stipulations of the parties; and on the state and federal statutes and formal rules and regulations, as properly applied to those facts.

(d) The order must:

(1) be in writing;

(2) be signed and dated by the arbitrator; and

(3) include a list of DADS and the facility's stipulations on uncontested issues and a statement of the arbitrator's decisions on all contested issues. If requested by either of the parties, the decision shall contain findings of fact and conclusions of law on controverted issues.

(e) The arbitrator shall file a copy of the order with SOAH and the director of hearings and send a copy to the parties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200504939
Cathleen Parsley
General Counsel
State Office of Administrative Hearings
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For further information, please call: (512) 475-4931

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PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.2

The Department of Information Resources (department) adopts amendments to §201.2, concerning procedures for complaints, vendor protests and the negotiation and mediation of certain contract disputes and bid submission, opening and tabulation procedures. The amendments, which relate to the vendor protests component of the rule, are adopted without change from what was proposed for comment in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6016).

Section 201.2(b)(1) of the amended rule provides that formal protests may be submitted, in writing, to the service delivery division director of the department, or his or her designee, within ten working days after the aggrieved knows, or should know, of the occurrence of the protested action. Requirements for the protests are set forth. Section 201.2(b)(2) provides that in instances where a timely protest is filed and an award has not been made, the department shall not proceed further with the solicitation or award unless the executive director, after consultation with the appropriate division director and the service delivery division director, or his or her designee if one was designated under §201.2(b)(1), makes a written determination that the award of contract without delay is necessary to protect substantial interests of the state.

Section 201.2(b)(3) of the amended rule sets forth the requirements for the content of the protest and requires that each protest be sworn to. Section 201.2(b)(4) authorizes the service

delivery division director, or his or her designee, to resolve the dispute before it is appealed to the executive director, or his or her designee. Under §201.2(b)(5) of the amended rule, the service delivery division director, or his or her designee, may solicit written responses to the protest from respondents who have submitted bids, proposals or offers for the contract involved and from other interested parties. Section 201.2(b)(6) authorizes the service delivery division director, or his or her designee, to consult with legal counsel concerning the dispute. If the dispute is not otherwise resolved, §201.2(b)(7) of the amended rule requires the service delivery division director, or his or her designee, to issue a written determination of the protest. Section 201.2(b)(8) establishes the procedure by which the determination can be appealed to the executive director or his or her designee. This change provides flexibility to the executive director so that he or she can decide not to consider an appeal in instances where doing so might appear biased. Appeals under this section must be written and must be received by the executive director's office within ten working days after the date of the determination by the service delivery division director, or his or her designee.

Section 201.2(b)(9) - (11) authorizes the executive director, or his or her designee, to confer with legal counsel in reviewing the appeal, review the protest petition and any requests for, and written responses to, the protest petition from any respondent or other interested party, and to refer the matter to the board of the department to be considered at a regularly scheduled open meeting. Section 201.2(b)(11) of the amended rule also provides that if a matter is not referred to the board by the executive director, or his or her designee, it is final. Section 201.2(b)(12) of the amended rule sets forth requirements that pertain to appeals made under §201.2(b)(8). Section 201.2(b)(13) requires board determinations be adopted by resolution, and §201.2(b)(14) provides that, generally, protests and appeals that are not timely filed will not be considered. Finally, §201.2(b)(15) of the amended rule provides that, absent a timely appeal, a decision issued by board, or in writing by the executive director, or his or her designee, or the service delivery division director, or his or her designee, is the final action of the department concerning the protest.

No comments were received in response to publication of the proposed amendments.

The amendments are adopted under §2054.052(a), Texas Government Code, which authorizes the department to adopt rules to implement its responsibility under Chapter 2054 and §2155.076, Texas Government Code, which requires each state agency to develop and adopt vendor protest resolution procedures by rule.

The amendments implement §2155.076, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504882

Renée Mauzy
General Counsel
Department of Information Resources
Effective date: November 17, 2005
Proposal publication date: September 23, 2005
For further information, please call: (512) 936-6448

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §351.504

The Health and Human Services Commission (HHSC) adopts new §351.504, without changes to the proposed text published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5117) and will not be republished.

Senate Bill 6 of the 79th Legislature requires the Executive Commissioner of HHSC to adopt rules establishing a caseload management reduction plan for the Adult Protective Services (APS) Division of Department of Family and Protective Services (DFPS). The new rule defines the purpose of the caseload management reduction plan and outlines the components to be considered in developing the plan.

The new section will result in the development of a plan to reduce the caseloads for adult protective services caseworkers, subject to the availability of funding.

No comments were received regarding adoption of the new section.

The new section is adopted under Government Code, §531.033, which authorizes the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Government Code §531.055, which authorizes the executive commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies, including the Department of Family and Protective Services; and Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 26, 2005.

TRD-200504844
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 15, 2005
Proposal publication date: September 2, 2005
For further information, please call: (512) 424-6900

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER A. GENERAL RULES

7 TAC §91.101

The Credit Union Commission adopts amendments to §91.101, concerning definitions and interpretations without changes to the text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3796).

The amendments add a definition for "catastrophic act" and clarify the definitions for "manufactured home" and "underserved area".

No comments were received on the proposal.

The amendments are adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific sections affected by the amendments are Texas Finance Code, §§122.004, 122.014, 122.101, 123.201.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2005.

TRD-200504854
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: November 16, 2005
Proposal publication date: July 1, 2005
For further information, please call: (512) 837-9236

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7 TAC §91.115

The Credit Union Commission adopts amendments to §91.115, concerning safety at unmanned teller machines without changes to the text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3798).

The amendments add specific definitions from Texas Finance Code §59.301 for ease of use of the rule and clarify that the rule applies unless the unmanned teller machine is exempt under Texas Finance Code §59.302.

No written comments were received on the proposal.

The amendments are adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §59.310, which authorizes the Commission to adopt rules to implement Chapter 59, Subchapter D of the Texas Finance Code.

The specific sections affected by the amendments are Texas Finance Code, §59.301 and §59.302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Harold E. Feeney
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Credit Union Department
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For further information, please call: (512) 837-9236

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7 TAC §91.125

The Credit Union Commission adopts a new §91.125 concerning accuracy of advertising with a non-substantive change to the text published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3799).

The rule sets forth standards for accuracy in advertising and allows the Commissioner to prohibit the use of advertising that is false, deceptive or misleading.

One written comment on the proposal was received from Karen Wilkerson, Vice President of Policy and Compliance at United Heritage Credit Union. The commenter requested that the rule be amended to clarify that disclosures about membership eligibility need not be included on advertising to existing members and that advertisement to non members should state that membership is required and not just that they have to eligible for membership. The Commission agrees with these comments and revised the rule at (b)(7) to incorporate the comments.

The rule is adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance and under Texas Finance Code §15.4022, which authorizes the Commission to prohibit false, misleading or deceptive practices.

The specific sections affected by the rule are Texas Finance Code, §§122.004 and 122.254.

§91.125. Accuracy of Advertising.

(a) As used in this rule, an advertisement is any informational communication, including oral, written, electronic, broadcast or any other type of communication, made to members, prospective members, or to the public at large in any manner designed to attract attention to the business of a credit union.

(b) No credit union shall disseminate or cause the dissemination of any advertisement that is in any way intentionally or negligently false, deceptive, or misleading. An advertisement shall be deemed by the Commissioner to be intentionally or negligently false, deceptive, or misleading if it:

(1) contains materially false claims or misrepresentations of material facts;

(2) contains materially implied false claims or implied misrepresentations of material fact;

(3) omits material facts;

(4) makes a representation likely to create an unjustified expectation about credit union products or services;

(5) states that the credit union's services are superior to or of a higher quality than that of another financial institution unless the credit union can factually substantiate the statement;

(6) states that a service is free when it is not, or contains intentionally untruthful or deceptive claims regarding costs and fees; and

(7) fails to disclose that membership is required to participate in or enjoy the advantage of the product or service (does not apply to advertisement to current members).

(c) Prior to placing an advertisement, a credit union must possess credible information which, when produced, substantiates the truthfulness of any assertion, representation or omission of material fact set forth in the advertisement.

(d) If the Commissioner notifies a credit union that an advertisement is deemed to be false, deceptive or misleading, the credit union will have ten days following the credit union's receipt of the notification to provide the Commissioner with information substantiating the truthfulness of the advertisement. If the credit union does not provide this information or the Commissioner, after receipt of the information, still deems the advertisement to be false, deceptive or misleading, the Commissioner may issue a cease and desist order to the credit union to stop the use of the advertisement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Harold E. Feeney
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Credit Union Department
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SUBCHAPTER B. ORGANIZATION PROCEDURES

7 TAC §91.202

The Credit Union Commission adopts amendments to §91.202 concerning form of bylaws; amendments to articles of incorporation and bylaws with no changes to the text published in the July 1, 2005 issue of the *Texas Register* (30 TexReg 3800).

The amendments insert proper rule references to correct incomplete cites.

No written comments were received on the proposal.

The amendments are adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific sections affected by the amendments are Texas Finance Code, §§122.001, 122.002, and 122.005.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §91.205

The Credit Union Commission adopts amendments to §91.205, concerning use of credit union name with non-substantive changes to the text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3800).

The amendments clarify and list examples of when a credit union must use its official name.

One written comment was received on the proposal from Harriet May, President/CEO of Government Employee's Credit Union of El Paso. The commenter requested that a credit union be allowed to hold vehicular title under a properly filed assumed name. The commenter stated that they had obtained a legal opinion confirming that lienholders using assumed names filed with the Secretary of State and County Clerk's offices are enforceable in connection with vehicular titles. The Commission agreed and inserted this exception into the rule.

The amendments are adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific section affected by the amendments is Texas Finance Code, §122.003.

§91.205. Use of Credit Union Name.

(a) A credit union shall do business under the name in which its certificate of incorporation was issued, unless a name change has been approved by the commissioner in accordance with the Act and these rules.

(b) Subject to the requirements of this rule, a credit union may adopt an assumed name. The credit union's official name, however, must be used in all official or legal communications or documents, which includes account and membership agreements, loan contracts, title documents (except for vehicle titles, which may also be under the credit union's assumed name), account statements, checks, drafts, and correspondence with the Department or the National Credit Union Administration. The assumed name may also be used in those materials so long as it is identified as such (e.g. Generic Credit Union dba GCU). Further, a credit union using an assumed name shall clearly disclose the credit union's official name when the assumed name is used on any signs, advertising, mailings, or similar materials.

(c) A credit union shall not use any name other than its official name until it has received a certificate of authority to use an assumed business name from the commissioner and has registered the designation with the Secretary of State and the appropriate county clerk.

(d) The commissioner shall not issue a certificate of authority to use an assumed business name if the designation might confuse or mislead the public, or if it is not readily distinguishable from, or is deceptively similar to, a name of another credit union lawfully doing business and that has established an office in this state.

(e) It is the responsibility of the credit union officials to comply with state and federal law applicable to corporate names.

(f) A credit union that intends to use an assumed name shall take reasonable steps to ensure that use of the name will not result in confusion to the extent that its different facilities may be mistaken as different credit unions or that the shares and deposits deposited at or through the different facilities are separately insured from those of the other facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2005.

TRD-200504857
Harold E. Feeney
Commissioner
Credit Union Department
Effective date: November 16, 2005
Proposal publication date: July 1, 2005
For further information, please call: (512) 837-9236

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7 TAC §91.209

The Credit Union Commission adopts amendments to §91.209, concerning reports and charges for late filing without changes to the text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3801).

The amendments add a requirement that credit unions notify the Department of any crime or suspected crime or catastrophic act that occurs at the credit union.

No written comments were received on the proposal.

The amendments are adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific sections affected by the amendments are Texas Finance Code, §122.004 and §122.101.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2005.

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Harold E. Feeney
Commissioner
Credit Union Department
Effective date: November 16, 2005
Proposal publication date: July 1, 2005
For further information, please call: (512) 837-9236

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SUBCHAPTER J. CHANGES IN CORPORATE STATUS

7 TAC §91.1003

The Credit Union Commission adopts amendments to §91.1003, concerning mergers/consolidations without changes to the text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3802).

The amendments restructure and clarify the rule for ease of use and add additional requirements to the plan for merger and the procedures for approval by members.

No written comments were received on the proposal.

The amendments are adopted under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §§121.1531 and 121.156, which authorize the Commission to adopt rules for mergers/consolidations.

The specific sections affected by the amendments are Texas Finance Code, §§121.151,121.152, 121.1531 and 121.156.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2005.

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Harold E. Feeney
Commissioner
Credit Union Department
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Proposal publication date: July 1, 2005
For further information, please call: (512) 837-9236

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) adopts without changes §§80.10, 80.55, 80.56, 80.58, 80.62, 80.66, 80.122, 80.126, 80.129, 80.133, 80.135, 80.180, 80.183, and 80.205. The text to the adopted rules without changes will not be republished. The following rules are adopted with non-substantive changes and will be republished: §§80.11, 80.20, 80.53, 80.54, 80.57, 80.64, 80.119, 80.120, 80.121, 80.123, 80.125, 80.127,

80.128, 80.130, 80.131, 80.132, 80.181, 80.201, 80.240, and 80.260. Section 80.208 is withdrawn to make substantive changes and will be published as a new proposed rule in the November 4, 2005, *Texas Register* issue. The proposed rules were published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4550).

The rules relating to installation standards (§§80.53 - 80.58, 80.62, and 80.240) are effective sixty (60) days following the date of publication with the *Texas Register* of notice that the rule has been adopted and all other rules are effective thirty (30) days following the date of publication with the *Texas Register* of notice that the rule has been adopted.

A public hearing was held on September 12, 2005. The following interested groups or associations presented comments either at the hearing or in writing: Texas Manufactured Housing Association ("TMHA") and Tax Assessor-Collector Association of Texas. Several individuals presented comments as well.

Set forth below are comments from TMHA and other parties suggesting revisions to specific subsections and the analysis and recommendations of staff. Comments from Tax Assessor-Collector Association of Texas and others regarding withdrawn §80.208 are not included with this filing.

General Comment: A commenter asked the Department to provide for blanket assignments of liens.

Department Response: The matter is under study.

General Comment on §80.11 - Definitions: A commenter said they expected the definition section to be removed and placed in an appendix to the rules to make updating easier when needed.

Department Response: It was never the intention of the Department to remove the definitions section; however, definitions that are set out in the law were removed.

Section 80.11(4) - Chattel Mortgage or Consumer loan: TMHA and other commenters said "consumer loan" is misleading and should be removed because the term is used for all loans to consumers, which include personal, family or household under the Truth-in-Lending Act.

Department Response: Department agrees to remove "or Consumer Loan."

Section 80.11(6) - Credit document: A commenter said this actually refers to a group of documents that refer to a single credit transaction. Suggested changing the word "All" to "Any" and to refer to an agreement as "executed," because this would imply mutual agreement by the parties involved.

Department Response: Department agrees to reword the definition as suggested.

Section 80.11(12) - Deposits: A commenter said this does not address the situation of when a deposit changes to be part of the down payment. Commenter suggested rewording the definition.

Department Response: Department does not agree, the definition is acceptable as proposed.

Section 80.11(12) - Deposits: A commenter suggested that the definition be clarified to indicate that it is to confirm the agreed price of special order homes.

Department Response: Department agrees to reword the definition as suggested.

Section 80.11(13) - Down Payment: A commenter said licensees take down payments on home accessories like skirting and appliances and this definition limits it to only the home. The commenter suggested rewording the definition to include other goods and services.

Department Response: Department agrees to reword the definition as suggested.

Section 80.11(22) - Manufactured home identification numbers. TMHA commented that the description where to place the seal is inconsistent with the instructions on the application form for a seal.

Department Response: Department agrees to correct this.

Section 80.11(27) - Used Home: TMHA and another commenter said the definition does not distinguish it from a new home without the requirement that a Statement of Ownership and Location (SOL) has been issued.

Department Response: Department agrees to reword the definition as suggested.

Section 80.20(b)(1). TMHA and another commenter said that fee increases are ultimately passed on to consumers and requested that we keep the fee for single-section homes at $75 instead of increasing to $100 and only adopt the increase of $25 for each additional section.

Department Response: Department agrees with this.

Section 80.20(g). A commenter said this section is not necessary since the Manufactured Housing Board is required to use other approved providers for continuing education of licensees.

Department Response: Department agrees to remove subsection (g).

Section 80.20(i). TMHA and another commenter said he thought this section would be changed where the Department would waive the licensee's fee for the consumer complaint inspection if the consumer is being unreasonable.

Department Response: Department agrees to reword subsection as suggested and deleted the sentence in §80.132(2)(B) that states the request must be accompanied by the required fee.

Section 80.53 (b). TMHA commented that if a manufacturer determines that one or more of its homes requires a deviation from the generic standards, then the manufacturer should supply the Department with DAPIA approved Instruction and a list of serial numbers.

Department Response: Department agrees to reword subsection.

Section 80.53(e). TMHA commented that this section should read as follows: "If the Department finds discrepancies in the manufacturer's installation instructions they will notify the manufacturer for their DAPIA to correct with approved drawings."

Department Response: Department agrees to reword subsection.

Section 80.54(d)(4). A commenter said the paragraph is not necessary since §80.121(3)(C) requires retailers to use the Retailer/Broker Disclosure for Used Manufactured Homes form for all used homes.

Department Response: Department agrees to remove the paragraph.

Section 80.54(e). A commenter said that skirting is rarely installed at the time of installation and is usually installed several days after installation by a completely different crew. The commenter requested rewording to prevent a misunderstanding by the setup crew that may think a vapor barrier is not required.

Department Response: Department agrees to revise for clarification.

Section 80.57(a)(1). TMHA and another commenter said that the requirement to make the water supply and sewer drain connections accessible for inspections may not be possible because they are not always close to one another. The commenter requested rewording to allow visual access when physical access in not possible.

Department Response: Department agrees to reword the paragraph.

Section 80.57(b). TMHA and another commenter said the new section is basically a restatement of the information found on the Site Preparation Notice and §80.54(g) and as such this section is not needed. Another commenter asked if this Site Preparation Notice met the requirements in this section.

Department Response: Department revised section by deleting the first two sentences, but did not agree with removing it entirely and believes the Site Preparation Notice meets these requirements.

Section 80.57(c). A commenter suggested adding additional language stating "Use of this form shall constitute compliance with the requirements of §80.57(b) of this title."

Department Response: Department does not agree that additional language is necessary.

Section 80.64(b). TMHA and another commenter suggested removing the subsection since it is covered in the statute.

Department Response: Department agrees to remove the subsection.

Section 80.119(b)(1). TMHA and another commenter commented that this section would allow more than one person to perform some aspect of the installation which makes it hard to determine who actually installed the home. Suggests rewording,

Department Response: Department does not agree, the rule as written is acceptable.

Section 80.119(c). TMHA did not agree with the last sentence added.

Department Response: Department agrees to delete the last sentence.

Section 80.119(d). TMHA and another commenter said requiring a licensee to report when there is no activity the prior month will be burdensome and requested the subsection be deleted.

Department Response: Department agrees to remove the section that requires reporting when there is no activity.

Section 80.120(1)(A)(v). TMHA and another commenter did not agree with the section asking for the name and address of "consumer, consignee, or person" since the manufacturer does not have the consumer information until after shipment to the retailer and does not ship to the directly to the consumer. The commenter requested the Department delete this section.

Department Response: Department revised by keeping the word "person" and deleting "consumer and consignee."

Section 80.120(1)(B). TMHA commented that extending the date to the 20th day of the month would be consistent with HUD Part 3282.553.

Department Response: Department agrees to revise as suggested.

Section 80.120(1)(C). As proposed this section will require a manufacturer to submit a report even when there are no shipments made. TMHA also suggested that this be limited to sales only in Texas, otherwise the manufacture would never satisfy the requirements.

Department Response: Department revised by removing the word "consignments" and revised wording to "shipments to any persons in the State of Texas..."

Section 80.121(a)(1)(L). TMHA and another commenter state that in this new proposed retailer responsibility only the first sentence is needed. Everything else in this proposed section is an explanation of what a contract is and should be moved to the definitions sections or included in the explanation of how to process an SOL.

Department Response: Department agrees to revise as suggested.

Section 80.121(a)(2)(A). TMHA and another commenter state that the passage of HB 2438 repealed the requirement in 1201.352 of the Occupations Code to provide "general descriptions" of the manufacturer and retailer warranties and now just requires that the actual warranties are given as reflected in §80.121(a)(2)(B). This section is no longer necessary and should be deleted.

Department Response: Department agrees to delete.

Section 80.121(a)(2)(B). A commenter suggested deleting "consumer's manual" because it is not listed as a statutory required as stated in this paragraph.

Department Response: Department agrees to remove wording.

Section 80.121(e)(1) and (2). TMHA commented that the proposed rule that requires the retailer to deliver a copy of the 162 disclosure in either English or Spanish before accepting a completed credit application, is unnecessary and is a restatement of the already stated provision.

Department Response: Department does not agree and believes this is a clarification of the requirement.

Section 80.121(f). TMHA and another commenter have commented that §1201.163 of the Occupations Code only mentions "chattel mortgage transactions" and as such the reference in this proposed section to "consumer loan" should be deleted. Additionally, HB 2483 required that the 163 Notice be redesigned and that its presentation occur earlier in the sales process. Since the notice is now tied to the credit application it will be impossible to comply with this rule that would require that this disclosure be given with "a copy of the contract to be executed with all information included, signed by the retailer." because the sales process hasn't reached the contract point yet. The requirement of including a contract with the 163 Notice should be deleted.

Department Response: Department agrees to revise the subsection.

Section 80.121(g). The proposed §80.121(a)(1)(M) would already require that a copy of the purchase contract be maintained in a retailer's sales file and that contract should contain all the

details of the sale not covered on any other disclosure. This proposed section should be deleted.

Department Response: Department agrees to delete this subsection.

Section 80.121(i). TMHA and another commenter have commented that this proposed section not only implies that brokers would not be subject to this rule and it also perpetuates the myth that there is such a thing as an open title This section should be deleted.

Department Response: Department agrees to delete the subsection.

Section 80.121(j). This proposed section would put an additional disclosure burden on the retailer without identifying what will be acceptable other than it must be in writing. This section should be deleted.

Department Response: Department does not agree with suggestion to delete the subsection, primarily because it addresses items which, although may be included in the sale documents, are to be provided at a later date.

Section 80.121(k). A commenter suggested we define "goods" and "sufficient detail."

Department Response: Department does not agree that definitions are necessary.

Section 80.121(l). A commenter stated the regulation should not exceed the statutory provisions by authorizing a retailer to retain "legitimate third party costs actually incurred."

Department Response: Department does not agree that it exceeds statutory provisions. Reimbursements for legitimate third party costs do not constitute deposits.

Section 80.121(m). The idea behind this proposal is OK but how will the Department be able to enforce it? What if a consumer says they didn't get (or take) the opportunity to inspect the home but they signed the contract anyway? What about sealed rooms on special ordered sectionals? This section should be deleted.

Department Response: Department agrees to delete the subsection.

Section 80.121(n). Since this section is, for the most part, made up of current rules that are simply being relocated, I suggest that for the sake of maintaining a logical order to the presentation of "Retailer Responsibilities" that this section be changed to (o) so that these prohibitions are located at the end of §80.121.

Department Response: Department does not agree with relocating the subsection.

Section 80.121(n)(5). A commenter stated the regulation should not exceed the statutory provisions by authorizing a retailer to retain "legitimate third party costs actually incurred."

Department Response: Department does not agree that it exceeds statutory provisions. Reimbursements for legitimate third party costs do not constitute deposits.

Section 80.123(a)(2). TMHA and another commenter have commented that the Department's proposal to add the last sentence is misleading. Adding this sentence to the rules would only confuse Department licensees and may actually cause them to sell homes in a way that actually complies with the rules but violates Texas Statute because selling real estate does require a license (realtors) in many cases.

Department Response: Department agrees to delete the sentence.

Section 80.123(a)(3)(C). TMHA and another commenter have commented that this proposed change creates the same situation for brokers as §80.123 (a) (2) creates for retailers and should be deleted for the same reasons.

Department Response: Department agrees to delete.

Section 80.123(a)(6)(B): TMHA commented that the removal of this section will create a situation where the Inspector will not know how to inspect the home when a consumer installs a home and should be reinstated.

Department Response: Department agrees to revise.

Section 80.123(a)(7)(A). The proposed changes to this section appear to say that salespeople can not work for licensed brokers. §1201.101(f) of the Occupations Code indicates that licensed salespeople may work for either a sponsoring retailer or broker but may only work for one sponsor at a time. The proposed changes seem to contradict this section of statute and should be deleted or at least reworded to avoid any contradiction.

Department Response: Department agrees to revise.

Section 80.123(a)(7)(B). The proposed changes to this section also eliminate brokers from sponsoring salespeople as in §80.123 (a) (7) (A) and should be changed for the same reasons already stated.

Department Response: Department disagrees because the statute specifically states the salesperson must be sponsored by a retailer to obtain a salespersons license.

Section 80.123(b)(3). The Department proposes to change the heading of this section to "Certification and Continuing Education Requirements for Salespersons." Since the previous section is entitled "Education Requirements for Manufacturers, Retailers, Brokers and Installers", I suggest it would be more consistent if the heading was simply changes to "Education Requirements for Salespersons."

Department Response: Department revised to "Continuing Education Requirements for Salespersons."

Section 80.123(b)(3)(A)(i). This proposed section deals exclusively with the initial licensing of a salesperson and as such it would seem to be more appropriate to have this information listed with the other salesperson license requirements in §80.123(a)(7) and I suggest the Department consider relocating this information.

Department Response: Department disagrees.

Section 80.123(b)(3)(D). TMHA and another commenter commented that the proposed addition of this section to the rules appears to be in violation of §1201.113(e) of the Occupations Code as amended by HB 2438. This section should be deleted.

Department Response: Department agrees to delete.

Section 80.125(e). The proposal made in this section seems to indicate that the salesperson should only identify the license number of their sponsoring licensee in advertising. Does this apply to personal business cards? Since the sponsoring retailer / broker is ultimately responsible for the actions of their salespersons / agents, is there ever a time when the salesperson needs to be identified by their own license number?

Department Response: Department reworded the subsection.

Section 80.125(f). This section would allow the director of the Department to grant exceptions to the rules on when a license number should be disclosed under (d) and (e). Will these exceptions be granted to individuals are to all licensees and how will licensees be notified about the exceptions?

Department Response: Department reworded to clarify that exceptions will be posted on the Department's website.

Section 80.127(g). The proposal created in this section as presented will rely greatly on the judgment of Department personnel. Who will decide what is an "exceptionally flagrant, willful violation"? I suggest that this section be reworded to clarify the intent or at a minimum disclose the criteria for "exceptional flagrant and willful.

Department Response: Department revised subsection by removing the wording in question.

Section 80.127(j). TMHA and another commenter commented this proposal seems to create a rule that allows the Department to base it's penalties on a number of factors. Among these factors is the ability to pay which, to my knowledge has never been a consideration before. The Manufactured Housing Board has already established a matrix that quantifies Department actions when a licensee is found to be in violation of the statute or rules. There is also a whole section in the Occupations Code on "Disciplinary Procedures". This proposed section is not needed and should be deleted.

Department Response: Department agrees to delete subsection.

Section 80.129. This appears to be a completely new proposal that has not been discussed in any of the working group meetings and appears to be different than the dispute resolution process described in §80.132. What is the purpose of this proposal? Why would anybody go through the process described in §80.132 when this appears to be much easier and obviously cheaper?

Department Response: The rule is a statutory requirement.

Section 80.130(a). A commenter suggested changing "contract for sale" to "applicable sales agreement."

Department Response: Department agrees to revise.

Section 80.131(b). TMHA and another commenter commented that HB 2438 extended the time period for consumers to report habitability warranty issues to their retailer to 65 days calendars from the date of sale or installation whichever is later. I suggest the rules be changed to mirror statute.

Department Response: Department agrees to revise.

Section 80.132(1). A commenter stated the last sentence is unnecessary and suggested deleting.

Department Response: Department agrees to delete the last sentence.

Section 80.132(1)(B). This section is numbered differently from the first sub-section. Also, as shown, §80.132(1)(B) deletes the requirement for certified mail notify licensees of complaints. Since the handling complaints is time sensitive and since failing to meet deadlines carries penalties to licensees, it seems important that the department know for certain that notifications have been received before pursuing administrative actions against a licensee. The focus should be on confirmed notification using the cheapest method.

Department Response: The numbering of the rule is correct since the first paragraph of the rule is an implied (a) and the Department has determined that certified mail is not required.

Section 80.133(f). The proposed change to this section would allow the consumer to hire unlicensed contractors to perform approved warranty work, which is a bad idea. The Department will have no way of knowing if these contractors are bonded, insured or even familiar with manufactured housing. Additionally, since manufactured housing construction and repairs are subject to a federally pre-emptive statute as well as manufacturer DAPIA requirements only companies licensed by the Department should be allowed to work on manufactured homes. This section should be left unchanged from the current rule.

Department Response: Department disagrees.

Section 80.181(2). Department changed "Executive Director" to "Director."

Section 80.181(2). As in a previous section the number scheme of this section is different. The statement required in (2) is simply too long. The requirement of §1201.107 (d) created by HB 2438 can be met with simply stating name, bond number and license number. The paragraph proposed by the Department will not only clutter the face of a contract but because of its length will not be read by most consumers. The majority of this section should be deleted and replaced with a more simple shorter statement.

Department Response: Department disagrees.

Section 80.201(a)(3). TMHA stated this section was in contradiction to the tax lien rules.

Department Response: The Department revised to clarify that liens mentioned in this section does not include tax liens.

Section 80.201(a)(4). One commenter stated this section would require licensees to get a statement from a local tax appraiser concerning unpaid taxes for the prior year before the Department will issue a new SOL. Section 32.03 of the Tax Code says that the only taxes that can be enforced against an SOL are the ones for which a lien has been perfected with the Department. This rule does not reflect that time limit and would imply that the Department would require a written statement for the previous year even after the July 1st annual deadline has expired.

Section 80.201(a)(4). TMHA stated they oppose the rule and believes we do not have authority to require a statement of no unpaid taxes from the tax appraiser.

Section 80.201(a)(4). A commenter suggested a slight revision to the paragraph stating a lien "could be filed" with the department.

Department Response to 80.201(a)(4): Department deleted the paragraph.

Section 80.201(a)(5), (6), (7) & (8). Each of these sub-sections begins with the word "IF". I suggest that replacing the 'If" with "When" might be better for readers trying to follow department rules.

Department Response: The Department agrees to change wording from "If" to "When." The Department deletes paragraph (8).

Section 80.201(a)(8). A commenter does not agree that a Statement of Ownership and Location on a home being declared abandoned must be accompanied by a notarized Affidavit of Fact for Abandonment form.

Department Response: Department agrees to delete paragraph (8) and the affidavit located in §80.260(a)(15).

Section 80.201(d). A commenter suggested changing text that states that a copy will be provided to "each" lien holder, and that we must take into consideration that some homes may have more than one lien holder.

Department Response: Department agrees to make the change.

Section 80.201(e)(1). This proposed section calls for a "completed application" which according to §80.201(a)(2) includes the required fee. However, the list of fees in §80.20 does not list a fee for converting old titles into SOLs.

Department Response: Department agrees to reword the paragraph.

Section 80.201(f)(2). A commenter stated the rule should include the possibility of a conversion from real to business use or salvage as well as personal property and specify that the habitability inspection is only required if the change is to personal property and notify the county so they can update their tax rolls.

Department Response: The Department reworded §80.201(f)(2)(C) and (f)(3).

Section 80.201(f)(3). A commenter stated the proposal did not provide all the requirements of obtaining the real property status of a home provided in §1201.2055 of the Occupations Code.

Department Response: The Department added the wording that the election must be perfected within 60 days of the issuance of a Statement of Ownership and Location.

Section 80.240(b)(23). A commenter suggested the Pier B design maximum height change from 80 inches to 67 inches and change the notation for Pier B to 67 inches and add language stating greater heights are allowed if they are within limits established in adopted federal standards.

Department Response: Department agrees to make the revisions.

Section 80.260(a)(1) - Site Preparation Notice Form. TMHA and other commenters suggest changing the paragraph that says, "If, at the time of installation your retailer is providing skirting...," because the skirting is rarely installed at the same time the home is installed.

Department Response: Department agrees to revise the paragraph for clarification.

Section 80.260(a)(1) - Site Preparation Notice Form. TMHA and another commenter suggested rewording the form to include the exact language in §80.57(b).

Department Response: Department does not agree that the form needs rewording.

Section 80.260(a)(3) - Consumer Protection Disclosure Form. TMHA and several other commenters suggested changes to the form.

Department Response: Department made most of the revisions suggested, but did not agree with all suggested changes. The following revisions were made: Deleted "consumer loan" and "(mortgage)" in the first sentence; added "real estate" in the third and fourth sentences; added "real estate" in the third column of the table heading before the word "mortgages;" changed "site improvement requirements" in the first column to "special foundation requirements;" deleted the word "none" and changed to "rare" in the third row of the chattel mortgages column; added "other than applying for a Statement of Ownership and Location" in the fifth row of the chattel mortgages column; added "may be" and deleted "often" in the third row of the "real estate mortgages column; deleted "mortgage purchase of" and (rarely more than 3% of loan)" in the heading before the second table that provides examples of monthly payments; added "principal amount of" in the sixth row of the first column of the examples table; added "(loan payment)" in the ninth row of the first column of the examples table; changed monthly tax escrow from $64.70 to $64.63 in the third column of the examples table; and added language after the second table to explain that taxes will vary depending on the location of the home and to check with their county tax office on homestead and other exemptions.

Section 80.260(a)(6) - Application for Statement of Ownership and Location. TMHA and other commenters oppose the revision in Block 3 adding the requirement to include a prior tax year receipt if the home is moved. Commenters suggested deleting the proposed wording or rewording to reflect the statutory deadlines established by the Legislature.

Department Response: Department agrees to delete the sentence. Also, additional revisions to the form are as follows: added "For Title Companies or Attorney's Offices - List your file or GF #" in Block 6; changed "warrants" to "certifies" in Block 10; and deleted last sentence in Block 10.

Section 80.260(a)(11) - Retailer/Broker Disclosure Statement. This proposed form simply restates information that is already required on other sale documents and forms. It is simply not necessary and either this form should be deleted or some of the other requirements should be amended to avoid duplication.

Department Response: Department disagrees. The Department revised the second paragraph by changing "license holder" to "retailer" and the fourth paragraph by changing "Wind Zone 1" to "Wind Zone I."

Section 80.260(a)(12) - Warranty and Disclosure for a Used Manufactured Home. This proposed form includes language that is not required by statute. Block 2 has a statement that provides for a habitability warranty that is good for "60 days after the date that the installation of the home is completed at the site designated and agreed upon by the purchaser." There is no provision for customer agreement in mentioned in §1201.455 (a). The phrase dealing with purchaser agreement should be deleted.

Page 2 of this form, Block 3 makes mention of a "stove top only" in the appliance section. Usually, if there is a stove top there is also a wall oven installed in the home as well and while "wall oven" could be added to the "other" category. All references to a "rating" should be deleted from the form and discussion of any aspects of the home that are not covered under the habitability requirement of §1202.453 should also be removed.

Department Response: Department agrees to delete "at the site designated and agrees upon by the purchaser" and also changed the second page by deleting the rating scale and requesting the retailer list any known defects.

Section 80.260(a)(13) - Continuous Manufactured Housing Surety Bond. TMHA and other commenters did not agree on the proposed revisions to the form.

Department Response: Department agrees to delete the form.

Section 80.260(a)(14) - Tax Lien Record/Release Form. TMHA and other commenters suggested revisions to the form.

Department Response: The rule and form are removed to make substantive changes and to repropose for public comment.

Section 80.260(a)(15) - Affidavit of Fact for Abandonment. At the bottom of this form it says this is page 1 of 2 but there is no page 2 included in the proposal.

Department Response: The Department deleted the abandonment form.

Section 80.260(a)(16) Manufacturer's Certificate of Origin. TMHA commented that the note at the bottom of the form is incorrect and should be removed because retailers can legally sell their inventory to retailers outside the State of Texas who do not have to be licensed with the Department.

Department Response: The Department deleted and replaced with "At first retail sale this ceases to evidence ownership of the home."

Section 80.260(b). Since this sections refers to optional forms, it should be clearly stated that these forms are provided for the convenience of consumers and licensees but their use is not required by the Department.

Department Response: The Department disagrees that additional explanation is necessary.

Section 80.260(b)(2) - Statement of No Unpaid Taxes. Commenters did not agree with an optional form being provided by the Department.

Department Response: The Department deleted the form.

Section 80.260(b)(3) - Notice of Intent to Acquire Ownership of an Abandoned Manufactured Home. Commenters did not agree with an optional form being provided by the Department.

Department Response: The Department deleted the form.

Except as noted below, the rules as proposed on August 12, 2005, are adopted as final rules with the following non-substantive changes.

Section 80.11(4) - Chattel Mortgage or Consumer Loan: Revised definition by deleting "Consumer Loan."

Section 80.11(6) - Credit document: Changed the word "All" to "Any" and added the word "executed" to refer to an agreement.

Section 80.11(12) - Deposits: Reworded for clarification.

Section 80.11(13) - Down Payment: Reworded for clarification.

Section 80.11(22) - Manufactured home identification numbers: Reworded instructions on where to apply the seal.

Section 80.11(27) - Used Home: Reworded for clarification.

Section 80.20(b)(1). Revised to maintain the $75 fee for a single-section, but adopt the increase of $25 for each additional section.

Section 80.20(g). Deleted proposed subsection.

Section 80.20(h) and (i). Changed subsection letter from (h) to (g) and (i) to (h).

Section 80.20(j)(1) & (2). Changed subsection to (i) and reworded paragraph (1) from comments received and in paragraph (2) the word "primarily" is added before the word "responsible" in the last sentence.

Section 80.20(k). Changed subsection letter from (k) to (j).

Section 80.20(l) and (m). Changed subsection letter from (l) to (k) and (m) to (l).

Section 80.53(b). Revised by adding that a list of all affected homes must be provided along with the DAPIA-approved installation instructions.

Section 80.53(e). Reworded for clarification.

Section 80.54(d)(4). Deleted paragraph.

Section 80.54(e). Revised to allow for installation of skirting that is not completed at the time of the home's installation.

Section 80.57(a)(1). Reworded to allow for visual inspection when physical access to view the water supply and sewer drain connections are not possible.

Section 80.57(b). Removed the first two sentences.

Section 80.64(b). Deleted proposed subsection and changed (c) to (b).

Section 80.119(c). Removed the new sentence at the end of the paragraph.

Section 80.119(d). Removed the new sentence at the end of the paragraph.

Section 80.120(1)(A)(v). Removed the wording "consumer, consignee or."

Section 80.120(1)(B). Revised deadline from 15th day of the month to 20th day.

Section 80.120(1)(C). Reworded for clarification.

Section 80.121(a)(1)(L). Revised by keeping only the first sentence.

Section 80.121(a)(2)(A). Deleted paragraph.

Section 80.121(a)(2)(B). Changed (B) to (A), deleted "consumer's manual" and added "and" at the end of paragraph.

Section 80.121(a)(2)(C). Changed from (C) to (B) and deleted "and" at the end and replaced with a period.

Section 80.121(f). Deleted "consumer loan" and "a copy of the contract to be executed with all information included, signed by the retailer." Also, changed "anyway" to "any way."

Section 80.121(g). Deleted subsection.

Section 80.121(h). Changed to subsection (g) and changed "therefore" to "therefor."

Section 80.121(i). Deleted subsection.

Section 80.121(j). Changed to subsection (h).

Section 80.121(k). Changed to subsection (i).

Section 80.121(l). Changed to subsection (j).

Section 80.121(m). Deleted subsection.

Section 80.121(n). Changed (n) to (k) and corrected the word "documented" to "document" in paragraph (3).

Section 80.121(o). Changed (o) to (l).

Section 80.123(a)(2). Deleted the last sentence.

Section 80.123(a)(3)(C). Deleted subparagraph.

Section 80.123(a)(6)(B): Not deleting the last sentence as proposed.

Section 80.123(a)(7)(A). The wording "or broker" is not deleted as proposed.

Section 80.123(b)(3). Removing the wording "Certification and."

Section 80.123(b)(3)(A). Changed "90" to "ninety (90)."

Section 80.123(b)(3)(A)(i). Changed "95th" to "ninety-fifth (95th)."

Section 80.123(b)(3)(A)(ii). Added wording "with reference to license number" for clarification.

Section 80.123(b)(3)(D). Deleted subparagraph.

Section 80.123(c)(2)(B). Deleted the wording "certificate of."

Section 80.123(c)(2)(C). Reworded for clarification.

Section 80.123(c)(2)(D). Deleted subparagraph.

Section 80.125(e). Reworded for clarification.

Section 80.125(f). Added sentence to clarify that exceptions will be posted on the Department's website.

Section 80.127(g). Reworded by deleting "exceptionally flagrant, willful."

Section 80.127(j). Deleted subsection.

Section 80.127(k). Changed to (j).

Section 80.128(j)(5)(B). Changed "20" to "twenty (20)."

Section 80.130(a). Changed "contract for sale" to "applicable sales agreement."

Section 80.131(b). Revised last sentence regarding time period for consumer to report habitability warranty issues to comply with the Standards Act.

Section 80.132(1). Deleted the last sentence.

Section 80.132(2)(B). Deleted the sentence stating, "The request must be accompanied by the required fee."

Section 80.181(2). Deleted the word "Executive."

Section 80.201(a)(3). Added wording to clarify that liens mentioned in this section do not include tax liens.

Section 80.201(a)(4). Deleted paragraph.

Section 80.201(a)(5), (6), and (7). Renumbered to (4), (5), and (6) and changed the first word from "If" to "When."

Section 80.201(a)(8). Deleted paragraph.

Section 80.201(d). Changed "the lienholder" to "each lienholder" in the first sentence and reworded last sentence for clarification.

Section 80.201(e)(1). Reworded to clarify that a fee is not required unless other changes are made to the Statement of Ownership and Location.

Section 80.201(f)(2)(C). Reworded to include election to convert the status from real to business use or salvage.

Section 80.201(f)(3). Added wording to clarify that the election must be perfected within 60 days from the issuance of a Statement of Ownership and Location.

Figure: 10 TAC §80.240(b)(23) - Pier Design. Changed Pier B design maximum height from 80 inches to 67 inches, changed the notation for Pier B to 67 inches, and added language stating greater heights are allowed if they are within limits established in adopted federal standards.

Figure: 10 TAC §80.260(a)(1) - Site Preparation Notice. Added "or within 90 days thereafter" to the sixth paragraph.

Figure: 10 TAC §80.260(a)(3) - Consumer Protection Disclosure. Many revisions made for clarification.

Figure: 10 TAC §80.260(a)(6) - Application for Statement of Ownership and Location. Revisions made to Block 3, Block 6 and Block 10.

Figure: 10 TAC §80.260(a)(11) - Retailer/Broker Disclosure Statement. Revisions made to the second paragraph by changing "license holder" to "retailer" and the fourth paragraph by changing "Wind Zone 1" to "Wind Zone I."

Figure: 10 TAC §80.260(a)(12) - Warranty and Disclosure for a Used Manufactured Home. Deleted "at the site designated and agreed upon by the purchaser" in Block 2 and changed Block 3 by deleting the rating scale and requesting the retailer list any known defects.

Figure: 10 TAC §80.260(a)(13) - Continuous Manufactured Housing Surety Bond. The form is deleted and the Manufacturer's Certificate of Origin is moved to this location from §80.260(a)(16).

Figure: 10 TAC §80.260(a)(14) - Tax Lien Record/Release Form. Deleting form to make substantive changes and to resubmit with reproposed §80.208 for public comment.

Figure: 10 TAC §80.260(a)(15) - Affidavit of Fact for Abandonment. The form is deleted.

Figure: 10 TAC §80.260(a)(16) - Manufacturer's Certificate of Origin. Changed the form's number from (16) to (13). Also, changed the note section to state "At first retail sale this ceases to evidence ownership of the home."

Figure: 10 TAC §80.260(b)(1) - Spanish version of the Consumer Disclosure Statement. The reference number changed from §80.260(b)(1) to §80.260(b).

Figure: 10 TAC §80.260(b)(2) - Statement of No Unpaid Taxes. The form is deleted.

Figure: 10 TAC §80.260(b)(3) - Notice of Intent to Acquire Ownership of an Abandoned Manufactured Home. The form is deleted.

The following is a restatement of the rules' factual basis:

Section 80.10 is adopted (without changes) to update the rule with the current installation and construction standards.

Section 80.11 - is adopted (with changes), which deletes unnecessary definitions, ones that are addressed in other rules or that exist in the State and Federal statutes, proposing new definitions and revising existing definitions for clarification.

Section 80.20 - is adopted (with changes) to comply with HB 2438 (79th Legislature, 2005 Regular Session), for clarification, and updating of fees. Also, relocated fees for Statements of Ownership and Location from §80.202 to §80.20(j).

Section 80.53 - is adopted (with changes), which changes title of rule and is revised for clarification.

Section 80.54 - is adopted (with changes) to organize in a more logical manner and eliminate unnecessary or redundant verbiage. The tables and figures are relocated to new Subchapter H (Tables and Figures).

Figure: 10 TAC §80.54(g) - is adopted (without changes) in regards to moving the Site Preparation Notice to §80.260(a)(1).

Figure: 10 TAC §80.54(h)(3) - is adopted (without changes) in regards to moving the footer configurations to §80.240(b)(22).

Figure: 10 TAC §80.54(h)(4) - is adopted (without changes) in regards to moving the footer capacities table to §80.240(a)(8).

Figure: 10 TAC §80.54(h)(6) - is adopted (without changes) in regards to moving the pier design figure to §80.240(b)(23).

Figure: 10 TAC §80.54(h)(6)(B) - is adopted (without changes) in regards to moving the pier loads without perimeter supports table to §80.240(a)(9).

Figure: 10 TAC §80.54(h)(6)(C) - is adopted (without changes) in regards to moving the pier loads with perimeter supports table to §80.240(a)(10) and moving perimeter pier front and side view figure to §80.240(b)(24).

Figure: 10 TAC §80.54(h)(7) - is adopted (without changes) in regards to moving the typical multi-section pier layout figure to §80.240(b)(25).

Figure: 10 TAC §80.54(h)(8) - is adopted (without changes) in regards to moving the typical single section pier layout figure to §80.240(b)(26).

Figure: 10 TAC §80.54(h)(9)(A) - is adopted (without changes) in regards to moving the determining column load and marriage line elevation figure to §80.240(b)(27).

Figure: 10 TAC §80.54(h)(9)(D) - is adopted (without changes) in regards to moving the mating line column loads table to §80.240(a)(11).

Section 80.55 - is adopted (without changes) to organize in a more logical manner and eliminate unnecessary or redundant verbiage. The tables and figures are relocated to new Subchapter H (Tables and Figures).

Figure: 10 TAC §80.55(a) - is adopted (without changes) in regards to moving the counties Located in Wind Zone II figure to §80.240(b)(1).

Figure: 10 TAC §80.55(c)(1) - is adopted (without changes) in regards to moving the anchor installation figure to §80.240(b)(2).

Figure: 10 TAC §80.55(c)(2) - is adopted (without changes) in regards to moving the placement of stabilizing plates figure to §80.240(b)(3).

Figure: 10 TAC §80.55(d)(1) - is adopted (without changes) in regards to moving the Wind Zone I Installation figure to §80.240(b)(4).

Figure: 10 TAC §80.55(d)(2) - is adopted (without changes) in regards to moving the maximum spacing for diagonal ties table to §80.240(a)(1).

Figure: 10 TAC §80.55(d)(3) - is adopted (without changes) in regards to moving the minimum number of diagonal ties table to §80.240(a)(2).

Figure: 10 TAC §80.55(e)(1) - is adopted (without changes) in regards to moving the maximum spacing for diagonal ties per side table to §80.240(a)(3).

Figure: 10 TAC §80.55(e)(2)(E) - is adopted (without changes) in regards to moving the diagonal strap placement figure to §80.240(b)(5).

Figure: 10 TAC §80.55(e)(2)(F) - is adopted (without changes) in regards to moving the diagonal and vertical ties figure to §80.240(b)(6).

Figure: 10 TAC §80.55(f)(1) - is adopted (without changes) in regards to moving the maximum centerline wall opening for column uplift brackets table to §80.240(a)(4).

Figure: 10 TAC §80.55(f)(4) - is adopted (without changes) in regards to moving the typical installation details figure to §80.240(b)(7).

Figure: 10 TAC §80.55(f)(5)(D) - is adopted (without changes) in regards to moving the anchor span figure to §80.240(b)(8).

Figure: 10 TAC §80.55(f)(6)(D) - is adopted (without changes) in regards to moving the longitudinal ties figure to §80.240(b)(10).

Section 80.56 - is adopted (without changes) for clarification and to relocate the tables and figures to new Subchapter H (Tables and Figures).

Figure: 10 TAC §80.56(a)(4) - is adopted (without changes) in regards to moving the mating line surfaces figure to §80.240(b)(11).

Figure: 10 TAC §80.56(b)(5) - is adopted (without changes) in regards to moving the floor connections table to §80.240(a)(5) and moving the floor connections figure to §80.240(b)(12).

Figure: 10 TAC §80.56(c)(2) - is adopted (without changes) in regards to moving the endwall connections figure to §80.240(b)(13).

Figure: 10 TAC §80.56(d)(3) - is adopted (without changes) in regards to moving the roof connections table to §80.240(a)(6).

Figure: 10 TAC §80.56(d)(4) - is adopted (without changes) in regards to moving the roof connection figure to §80.240(b)(14).

Figure: 10 TAC §80.56(e)(6) - is adopted (without changes) in regards to moving the exterior roof close up figure to §80.240(b)(15).

Figure: 10 TAC §80.56(g)(4) - is adopted (without changes) in regards to moving the HVAC crossover figure to §80.240(b)(16).

Figure: 10 TAC §80.56(h)(1) - is adopted (without changes) in regards to moving the multi-section water crossover connection figure to §80.240(b)(17).

Figure: 10 TAC §80.56(i)(2)(F) - is adopted (without changes) in regards to moving the Drain, Waste and Vent Floor Piping System figure to §80.240(b)(18).

Figure: 10 TAC §80.56(j)(2) - is adopted (without changes) in regards to moving the chassis bonding figure to §80.240(b)(19).

Figure: 10 TAC §80.56(j)(3) - is adopted (without changes) in regards to moving the electrical crossover figure to §80.240(b)(20).

Figure: 10 TAC §80.56(j)(6) - is adopted (without changes) in regards to moving the main panel box feeder conductor sizes table to §80.240(a)(7).

Figure: 10 TAC §80.56(k)(2) - is adopted (without changes) in regards to moving the fuel gas pipe crossover connections figure to §80.240(b)(21).

Section 80.57 - is adopted (with changes), which relocates text previously in §80.54(f) and (g) to organize and group in a more logical manner and moved the tables and figures previously included with the text to new Subchapter H (Tables and Figures).

Section 80.58 - is adopted (without changes), which relocates text previously in §80.54(h) to organize and group in a more logical manner and move the tables and figures previously included with the text to new Subchapter H (Tables and Figures).

Section 80.62 - is adopted (without changes) to make revisions for clarification and rewording since the Department now registers stabilizing components and systems, but no longer approves them.

Section 80.64 - is adopted (with changes) to revise alteration procedures for clarification and to remove unnecessary text.

Section 80.66 - is adopted (without changes) to revise for clarification.

Section 80.119 - is adopted (with changes) to revise for clarification.

Section 80.120 - is adopted (with changes) to add the monthly shipment report rule that was previously located in repealed §80.203, revise references and make revisions for clarification.

Section 80.121 - is adopted (with changes) to comply with HB 2438 (79th Legislature, 2005 Regular Session), add text from repealed §§80.200(b) relating to conveyance of a good and marketable title, 80.181 relating to providing the 162 Notice, and 80.182 relating to providing the 163 Disclosure. Other text updated for clarification and relocated disclosure forms associated with §§80.181 and 80.182 to new Subchapter I (Forms).

Section 80.122 - is adopted (without changes) to revise for clarification.

Section 80.123 - is adopted (with changes) to re-organize the license requirements in a more logical manner, made revisions to comply with HB 2438 (79th Legislature, 2005 Regular Session), and to add a new section that explains new and renewed licenses will not be valid if all required fees are not paid.

Section 80.125 - is adopted (with changes) to revise for clarification and added a section requiring disclosure of license number of the person advertising.

Section 80.126 - is adopted (without changes) to revise for consistency with the other sections.

Section 80.127 - is adopted (with changes) for clarification and to add new sections to include text from repealed §80.129(g) through (m).

Section 80.128 - is adopted (without changes) to revise reference of "working days" to "business days" and to capitalized "Department."

Section 80.129 - is adopted (without changes) to replace repealed rule with new rule that explains the department offers alternative dispute resolution. Moved relevant text in the repealed rule to §80.127 and moved the Enforcement Matrix figure in subsection (g) to §80.240(a)(12).

Section 80.130 - is adopted (with changes) for clarification.

Section 80.131 - is adopted (with changes) for clarification.

Section 80.132 - is adopted (with changes) for clarification.

Section 80.133 - is adopted (without changes) for clarification.

Section 80.135 - is adopted (without changes) for clarification.

Section 80.180 - is adopted (without changes) to capitalized "Department" for consistency with the other sections.

Section 80.181 - is adopted (with changes) to replace repealed rule with a new rule to comply with HB 2438 (79th Legislature, 2005 Regular Session).

Section 80.183 - is adopted (without changes) for clarification.

Section 80.201 - is adopted (with changes) to comply with HB 2438 (79th Legislature, 2005 Regular Session), for clarification and to organize in a more logical manner.

Section 80.205 - is adopted (without changes) by maintaining the section on Inventory Finance Liens, deleting the unnecessary sections on Release of Liens and Foreclosure or Repossession and moved the section on right of survivorship to §80.201.

Section 80.240 is adopted (with changes), which adds a new Subchapter H relating to Tables and Figures. The tables from various rules are located in subsection (a) and the figures are located in subsection (b) for easier referencing.

Figure: 10 TAC §80.240(a)(1) is adopted (without changes) - Maximum Spacing for Diagonal Ties.

Figure: 10 TAC §80.240(a)(2) is adopted (without changes) - Minimum Number of Diagonal Ties.

Figure: 10 TAC §80.240(a)(3) is adopted (without changes) - Maximum Spacing for Diagonal Ties per side of the Assembled Unit.

Figure: 10 TAC §80.240(a)(4) is adopted (without changes) - Bracket Installation - Maximum Centerline Wall Opening for Column Uplift Brackets.

Figure: 10 TAC §80.240(a)(5) is adopted (without changes) - Floor Connections - Wind Zone I and II.

Figure: 10 TAC §80.240(a)(6) is adopted (without changes) - Roof Connection - Fastener Type and Spacing.

Figure: 10 TAC §80.240(a)(7) is adopted (without changes) - Main Panel Box Feeder Conductor Sizes.

Figure: 10 TAC §80.240(a)(8) is adopted (without changes) - Footer Capacities.

Figure: 10 TAC §80.240(a)(9) is adopted (without changes) - Pier Loads without Perimeter Supports.

Figure: 10 TAC §80.240(a)(10) is adopted (without changes) - Pier Loads with Perimeter Supports.

Figure: 10 TAC §80.240(a)(11) is adopted (without changes) - Mating Line Column Loads.

Figure: 10 TAC §80.240(a)(12) is adopted (without changes) - Enforcement Matrix.

Figure: 10 TAC §80.240(b)(1) is adopted (without changes) - Counties Located in Wind Zone II.

Figure: 10 TAC §80.240(b)(2) is adopted (without changes) - Anchor Installation.

Figure: 10 TAC §80.240(b)(3) is adopted (without changes) - Placement of Stabilizing Devices.

Figure: 10 TAC §80.240(b)(4) is adopted (without changes) - Wind Zone I Installation (Single & Multi-Section).

Figure: 10 TAC §80.240(b)(5) is adopted (without changes) - Diagonal Strap Placement for Piers Exceeding 36 in. in Height.

Figure: 10 TAC §80.240(b)(6) is adopted (without changes) - Diagonal and Vertical Ties.

Figure: 10 TAC §80.240(b)(7) is adopted (without changes) - Typical Installation Details.

Figure: 10 TAC §80.240(b)(8) is adopted (without changes) - Anchor Span.

Figure: 10 TAC §80.240(b)(9) is adopted (without changes) - Typical Longitudinal Stabilizing Device. NOTE: Because the Department no longer employs an engineer, this proposed drawing has not been reviewed or approved by a Department engineer.

Figure: 10 TAC §80.240(b)(10) is adopted (without changes) - Longitudinal Ties.

Figure: 10 TAC §80.240(b)(11) is adopted (without changes) - Mating Line Surfaces.

Figure: 10 TAC §80.240(b)(12) is adopted (without changes) - Floor Connections.

Figure: 10 TAC §80.240(b)(13) is adopted (without changes) - Endwall Connections.

Figure: 10 TAC §80.240(b)(14) is adopted (without changes) - Roof Connection.

Figure: 10 TAC §80.240(b)(15) is adopted (without changes) - Exterior Roof Close Up.

Figure: 10 TAC §80.240(b)(16) is adopted (without changes) - HVAC (Heat/Cooling) Duct Crossover.

Figure: 10 TAC §80.240(b)(17) is adopted (without changes) - Multi-Section Water Crossover Connections.

Figure: 10 TAC §80.240(b)(18) is adopted (without changes) - Drain, Waste and Vent Floor Piping System.

Figure: 10 TAC §80.240(b)(19) is adopted (without changes) - Chassis Bonding.

Figure: 10 TAC §80.240(b)(20) is adopted (without changes) - Electrical Crossover.

Figure: 10 TAC §80.240(b)(21) is adopted (without changes) - Fuel Gas Pipe Crossover Connections.

Figure: 10 TAC §80.240(b)(22) is adopted (without changes) - Footer Configurations. NOTE: Because the Department no longer employs an engineer, this proposed drawing has not been reviewed or approved by a Department engineer.

Figure: 10 TAC §80.240(b)(23) is adopted (with changes) - Pier Design (Single and Multi-Section Stack). NOTE: Because the Department no longer employs an engineer, this proposed drawing has not been reviewed or approved by a Department engineer.

Figure: 10 TAC §80.240(b)(24) is adopted (without changes) - Perimeter Pier Front & Side View.

Figure: 10 TAC §80.240(b)(25) is adopted (without changes) - Typical Multi-Section Pier Layout.

Figure: 10 TAC §80.240(b)(26) is adopted (without changes) - Typical Single Section Pier Layout.

Figure: 10 TAC §80.240(b)(27) is adopted (without changes) - Determining Column Load and Marriage Line Elevation.

Section 80.260 is adopted (with changes) to add a new Subchapter I relating to Forms. The required forms from various rules are located in subsection (a) and the optional forms are located in subsection (b) for easier referencing. Also, revised forms to comply with HB 2438 (79th Legislature, 2005 Regular Session).

Figure: 10 TAC §80.260(a)(1) is adopted (with changes) - Site Preparation Notice.

Figure: 10 TAC §80.260(a)(2) is adopted (without changes) - Consumer Disclosure Statement.

Figure: 10 TAC §80.260(a)(3) is adopted (with changes) - Consumer Protection Disclosure - Chattel Mortgage Transactions.

Figure: 10 TAC §80.260(a)(4) is adopted (without changes) - Notice of Installation (Form T).

Figure: 10 TAC §80.260(a)(5) is adopted (without changes) - Estimate for Reassigned Warranty Work.

Figure: 10 TAC §80.260(a)(6) is adopted (with changes) - Application for Statement of Ownership and Location.

Figure: 10 TAC §80.260(a)(7) is adopted (without changes) - Release or Foreclosure of Lien (Form B).

Figure: 10 TAC §80.260(a)(8) is adopted (without changes) - Quick Processing Form.

Figure: 10 TAC §80.260(a)(9) is adopted (without changes) - Form M.

Figure: 10 TAC §80.260(a)(10) is adopted (without changes) - Affidavit of Fact for Right of Survivorship.

Figure: 10 TAC §80.260(a)(11) is adopted (with changes) - Retailer/Broker Disclosure Statement.

Figure: 10 TAC §80.260(a)(12) is adopted (with changes) - Warranty of Habitability.

Figure: 10 TAC §80.260(a)(13) is adopted (with changes) - the form originally proposed is deleted (Continuous Manufactured Housing Surety Bond) and the Manufacturer's Certificate of Origin form relocated to this reference from §80.260(a)(16).

Figure: 10 TAC §80.260(a)(14) is not adopted because the Tax Lien Record/Release is deleted.

Figure: 10 TAC §80.260(a)(15) is not adopted because the - Affidavit of Fact for Abandonment is deleted.

Figure: 10 TAC §80.260(a)(16) is not adopted in this referenced location. The Manufacturer's Certificate of Origin is moved to §80.260(a)(13) and is adopted with changes.

Figure: 10 TAC §80.260(b)(1) is adopted (with changes) - Spanish Version of Consumer Disclosure Statement reference is changed to §80.260(b).

Figure: 10 TAC §80.260(b)(2) is not adopted because the Statement of No Unpaid Taxes is deleted.

Figure: 10 TAC §80.260(b)(3) is not adopted because the Important Notice of Intent to Acquire Ownership of an Abandoned Manufactured Home is deleted.

SUBCHAPTER A. CODES AND STANDARDS

10 TAC §80.10

The amended rule is adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adopted rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 31, 2005.

TRD-200504963
Timothy K. Irvine
Executive Director, Manufactured Housing Division of TDHCA
Texas Department of Housing and Community Affairs
Effective date: December 11, 2005
Proposal publication date: August 12, 2005
For further information, please call: (512) 475-2206

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SUBCHAPTER B. DEFINITIONS

10 TAC §80.11

The amended rule is adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adopted rule.

§80.11. Definitions.

Terms used herein that are defined in the Code and the Standards Act have the meanings ascribed to them therein. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) APA--Administrative Procedure Act, Texas Government Code, Chapter 2001.

(2) Business days--Includes every day on the calendar except Saturday, Sunday, and federal and state holidays.

(3) Certificate of Attachment--A certificate issued by the Department to the person who surrenders the Manufacturer's Certificate of Origin or document of title when the home has been permanently attached to real estate. Certificates of Attachment are no longer issued after June 18, 2003.

(4) Chattel Mortgage--Any loan that is not subject to the Real Estate Settlement Procedures Act (RESPA).

(5) Coastline--The shoreline that forms the boundary between the land and the Gulf of Mexico or a bay or estuary connecting to the Gulf of Mexico that is more than five miles wide.

(6) Credit document--Any executed written agreements between the consumer and creditor that describe or are required in connection with an actual credit transaction.

(7) Creditor--A person involved in a credit transaction who:

(A) extends or arranges the extension of credit; or

(B) is a retailer or broker as defined in the Standards Act and participates in arranging for the extension of credit.

(8) Custom designed stabilization system--An anchoring and support system that is not an approved method as prescribed by the state generic standards, manufacturer's installation instructions, or other systems pre-approved by the Department.

(9) Dangerous conditions--Any condition which, if present, would constitute an imminent threat to health or safety.

(10) DAPIA--The Design Approval Primary Inspection Agency.

(11) Department or TDHCA--The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA).

(12) Deposits--Money or other consideration given by a consumer to a retailer, salesperson, or agent of a retailer to hold a manufactured home in inventory for subsequent purchase or to confirm the agreed price on a home to be specially ordered.

(13) Down Payment--An amount, including the value of any property used as a trade-in, paid to a retailer to be applied to the purchase price of a manufactured home, including any goods or services that are a part of that transaction.

(14) Dwelling unit -One or more habitable rooms which are designed to be occupied for living.

(15) FMHCSS--Federal Manufactured Home Construction and Safety Standards that implement the National Manufactured Home Construction and Safety Standards Act of 1974, 42 USC 5401, et seq., as amended from time to time.

(16) Independent testing laboratory--An agency or firm that tests products for conformance to standards and employs at least one engineer or architect licensed in at least one state.

(17) Inventory Lender--A person that is involved in extending or arranging for credit in inventory financing secured by manufactured housing.

(18) IPIA--The Production Inspection Primary Inspection Agency which evaluates the ability of manufactured home manufacturing plants to follow approved quality control procedures and/or provides ongoing surveillance of the manufacturing process.

(19) Long-Term Lease--For the purpose of determining whether or not the owner of a manufactured home may elect to treat the home as real property, is a lease on land to which the manufactured home has been attached and which:

(A) has been approved by each lienholder for the manufactured home by placing on file with the Department written consent to have the home treated as real property; or

(B) is for at least five years if the home is not financed.

(20) Loss--Actual financial loss or damage, not including exemplary, punitive, special, or consequential damages.

(21) Main frame--A chassis or structure serving a similar purpose.

(22) Manufactured home identification numbers--For the purpose of maintaining ownership and location records, including the perfection of liens, the numbers shall include the HUD label number(s) and the serial number(s) imprinted or stamped on the home in accordance with HUD departmental regulations. For homes manufactured prior to June 15, 1976, the Texas seal number, as issued by the Department, shall be used instead of the HUD label number. If a home manufactured prior to June 15, 1976, does not have a Texas seal, or if a home manufactured after June 15, 1976, does not have a HUD label, a

Texas seal shall be purchased from the Department and attached to the home in upper left corner on the end opposite the tongue end and used for identification in lieu of the HUD label number.

(23) Manufactured home site--That area of a lot or tract of land on which a manufactured home is installed.

(24) Permanent foundation--A foundation which meets the requirements of §80.54 of this title (relating to Requirements for the Installation of Manufactured Homes) and was constructed according to drawings, as required by that section, which state that the foundation is a permanent foundation for a manufactured home.

(25) Promptly--Means within the time prescribed by the Standards Act, these Rules, and any administrative order (including any properly granted extension) or, in the case of a matter that constitutes an imminent threat to health or safety, as quickly as reasonably possible.

(26) Stabilization system--A combination of the anchoring and support system. It includes, but is not limited to the following components:

(A) Anchoring components--Any component which is attached to the manufactured home and is designed to resist the horizontal and vertical forces imposed on the manufactured home as a result of wind loading. These components include, but are not limited to auger anchors, rock anchors, slab anchors, ground anchors, stabilizing devices, connection bolts, j-hooks, buckles, and split bolts.

(B) Anchoring equipment--Straps, cables, turnbuckles, tubes, and chains, including tensioning devices, which are used with ties to secure a manufactured home to anchoring components or other devices.

(C) Anchoring systems--Combination of ties, anchoring components, and anchoring equipment that will resist overturning and lateral movement of the manufactured home from wind forces.

(D) Diagonal tie--A tie intended to primarily resist horizontal forces, but which may also be used to resist vertical forces.

(E) Footing--That portion of the support system that transmits loads directly to the soil.

(F) Ground anchor--Any device at the manufactured home site designed to transfer manufactured home anchoring loads to the ground.

(G) Longitudinal ties--Designed to prevent lateral movement along the length of the home.

(H) Shim--A wedge-shaped piece of hardwood or other registered component not to exceed one (1) inch vertical (actual) height.

(I) Stabilizing components--All components of the anchoring and support system such as piers, footings, ties, anchoring equipment, ground anchors and any other equipment, which supports the manufactured home and secures it to the ground.

(J) Support system--A combination of footings, piers, caps and shims that support the manufactured home.

(K) Vertical tie--A tie intended primarily to resist the uplifting and overturning forces.

(27) Used home--Any manufactured home (or mobile home) which has been occupied for living or for which a Statement of Ownership and Location has been issued.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
Executive Director, Manufactured Housing Division of TDHCA
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SUBCHAPTER C. FEE STRUCTURE

10 TAC §80.20

The amended rule is adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adopted rule.

§80.20. Fees.

(a) Annual License Fees and Renewal Fees:

(1) $425 for each manufacturer's plant license (valid for one year);

(2) $275 for each retailer's sales license (valid for one year);

(3) $275 for each rebuilder's license (valid for one year);

(4) $175 for each broker's license (valid for one year);

(5) $175 for each installer's license (valid for one year); and

(6) $200 for each salesperson's license (valid for two years).

(b) Installation Fees:

(1) There is a reporting fee of $75 for the installation of a single section manufactured home and $25 for each additional section.

(2) The reporting fee must be submitted to the Department with the completed Notice of Installation (Form T) no later than the 15th day of the month after which the installation is completed.

(3) Fee distributions to local governmental entities performing inspection functions pursuant to contract with the Department shall be made in accordance with Department procedures and the provisions of the contract.

(c) Seal Fee: There is a fee of $35 for the issuance of Texas Seals. Any person who sells, exchanges, lease purchases, or offers for sale, exchange, or lease purchase a used HUD-Code manufactured home manufactured after June 15, 1976, that does not have a HUD label affixed, or a used mobile home manufactured prior to June 15, 1976, that does not have a Texas Seal affixed shall file an application to the Department for a Texas Seal. The application shall be accompanied by the seal fee of $35 per section made payable to the Department.

(d) Monitoring Fee: There is a fee, as required by HUD, to be paid by each manufacturer in this state for each HUD-Code manufactured home produced. The monitoring inspection fee is established by the secretary of HUD, (pursuant to 24 CFR §3282.307) who shall distribute the fees collected from all manufacturers among the approved and conditionally approved states based on the number of new homes whose first location after leaving the manufacturing plant is on the premises of distributor, retailer, or consumer in that state, and the extent of participation of the state in the joint monitoring program established under the National Manufactured Housing Construction and Safety Standards Act of 1974.

(e) Homeowner's Temporary Installer's License: There is a fee of $100 for the issuance of a homeowner's temporary installer's license, which shall also include the cost of the installation inspection. The fee shall be made payable to the Department.

(f) Education Fee: Each attendee at the course of instruction in the law and consumer protection regulations for license applicants shall be assessed a fee of $250. If a manufacturer requests the training be performed at his or her facility, the manufacturer shall reimburse the Department for the actual costs of the training session (educational fee plus actual cost of travel).

(g) There is a fee of $300 to process an application for a contract to prepare or administer a certification and continuing education program under §1201.113(c) of the Standards Act.

(h) Habitability Inspection:

(1) There is a fee of $150 for the inspection of a manufactured home which is to be designated for residential use after having been previously designated for business use or which is elected as personal property after having been designated as real property. The purpose of the inspection is to determine if the home is habitable as defined by §1201.453 of the Standards Act. The fee must accompany a written request for inspection and must be submitted either prior to or in connection with the submission of an Application for Statement of Ownership and Location.

(2) There is a fee of $200 for the plan review and inspection of a salvaged manufactured home which is to be rebuilt. The purpose of the inspection is to determine if the home is habitable so that it may be designated for residential use.

(A) The fee and required notification shall be submitted in accordance with §80.66 of this title (relating to Rebuilding or Repairing a "Salvaged" Manufactured Home).

(B) The rebuilder shall also be charged for mileage and per diem incurred by Department personnel traveling to and from the location of the home.

(C) The inspector shall advise the rebuilder of the charges incurred, and no Statement of Ownership and Location shall be issued until all fees have been paid.

(i) Consumer Complaint Inspection:

(1) If a licensee requests an inspection in connection with a complaint, the licensee will be billed an inspection fee of $150 if, as a result of the inspection, the licensee is found to have violated the Standards Act or these rules.

(2) There is a fee of $150 for the reinspection of a consumer's home. The fee shall be paid by the party deemed primarily responsible by the Department.

(j) Fees Relating to Statements of Ownership and Location. Each fee shall accompany the required documents forwarded to the Manufactured Housing Division of the Department at its principal office in Austin.

(1) A fee of $55 will be required for the issuance of a Statement of Ownership and Location;

(2) A fee of $1.50 will be required for certified copies requested other than one certified copy of a Statement of Ownership and Location sent to the owner and one that is sent to the lienholder;

(3) There shall be a fee of $55 for Quick Processing Service in addition to the $55 processing fee for each application for Statement of Ownership and Location.

(A) Quick Processing Service shall be defined as the processing of an Application for Statement of Ownership and Location within three (3) business days from the day the complete application is received in the Manufactured Housing Division. The Department will refund the Quick Processing Service fee if the completed application is not processed within the required time.

(B) If an applicant desires Quick Processing, the Quick Processing form provided in §80.260(a)(8) of this title (relating to Required and Optional Forms) must be completed and attached to the front of the application for the application to be deemed complete.

(C) If the Quick Processing form is missing or incomplete or if any other necessary documents or fees are deficient, any delays in processing caused by such will not entitle the payer to a refund of the Quick Processing fee or any other required processing fee.

(D) If Quick Processing is requested but the Quick Processing fee is not paid, the application will receive regular processing.

(E) All Quick Processing applications must be submitted by overnight service or delivered in-person.

(F) If Quick Processing is not completed within three (3) business days, as required, the Quick Processing portion of the fee only will be refunded.

(G) All Statements of Ownership and Location, including Quick Processing items, will be sent via regular mail unless a prepaid overnight envelope is provided.

(4) If a correction of a document is required as a result of a mistake by the Department, the issuance of a new document shall not require a fee. However, if the error was not made by the Department, a request for correction of the error must be made on a completed Application for Statement of Ownership and Location and submitted to the Department along with the required fee of $55 and any necessary supporting documentation.

(5) When multiple applications are submitted, the Form M provided in §80.260(a)(9) of this title (relating to Required and Optional Forms) must be completed and attached to the front of the applications to identify each application and reconcile the fee for each application with the total amount of the payment. Failure to provide this form, properly completed, will delay the application's being deemed complete for processing.

(k) Method of Payment.

(1) All checks shall be made payable to the Texas Department of Housing and Community Affairs or TDHCA.

(2) All license renewals may also be paid by credit card or ACH, if submitted through Texas Online.

(l) Loss of Check Writing Privileges. Any person who has more than one (1) time paid for anything requiring a fee under these rules with a check that is returned uncollectible, whether "NSF," closed

account, refer to maker, or for any similar reason, is required to make all future payments, if any, by means of money order or cashier's check.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
Executive Director, Manufactured Housing Division of TDHCA
Texas Department of Housing and Community Affairs
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SUBCHAPTER D. STANDARDS AND REQUIREMENTS

10 TAC §§80.53 - 80.58, 80.62

The new and amended rules are adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adopted rules.

§80.53. Requirements for Manufacturer's Designs and Installation Instructions.

(a) With each new home, the manufacturer shall provide printed instructions which at a minimum must:

(1) specify the location, orientation and required capacity of stabilizing components on which the design is based;

(2) be filed with the Department;

(3) be approved by the manufacturer's DAPIA; and

(4) contain DAPIA approval stamps, engineer or architect approval stamps, and the installation manual effective date on each page of the installation instructions or on the cover pages of bound installation manuals, unless an equivalent method of authentication is used for electronically filed documents.

(b) If a manufacturer determines that one or more of its homes requires a deviation from the generic standards to protect the structural integrity of the home, the manufacturer must include instructions for the necessary deviation in the manufacturer's DAPIA-approved installation instructions and provide a list of all homes affected. The manufacturer must provide a copy to the Department along with a letter informing the Department of the required deviation included in the instructions and giving the Department permission to reproduce and release copies of such instructions upon request. On the Department's website, the Department will maintain a current list of all required deviations from generic standards and will provide a copy to anyone who requests it.

(c) At least thirty (30) calendar days prior to the effective date of any change, modification, or update to the manufacturer's installation instructions or any appendix, the manufacturer shall file such change, modification, or update with the Department and mail a copy(s) to all the manufacturer's retailers.

(d) The manufacturer shall file with the Department additional copies of manufacturer's installation instructions for each model in the number specified by the Department. If no number is specified, one copy of each such set of instructions will suffice.

(e) If the Department finds that the manufacturer's instructions do not address all matters necessary to enable the Department to inspect an installation, the Department will advise the manufacturer that it was unable to complete the inspection(s) and request that the manufacturer amend its DAPIA approved instructions.

§80.54. Requirements for the Installation of Manufactured Homes.

(a) When they are installed, all manufactured homes shall be installed by a licensed installer to resist overturning and lateral movement of the home, and the installation must be completed in accordance with instructions appropriate for the Wind Zone where the home is to be installed as per one of the following:

(1) the home manufacturer's DAPIA-approved installation instructions;

(2) the state's generic standards set forth in §§80.55, 80.56, 80.57, and 80.58 of this title;

(3) the instructions for a stabilization system registered with the Department in accordance with §80.62 of this title (relating to Registration of Stabilizing Components and Systems); or

(4) the instructions for a special stabilization system which;

(A) may or may not be a permanent foundation;

(B) is for a particular manufactured home or an identified class of manufactured homes to be installed at a particular area with similar soil properties according to county soil survey or other geotechnical reports; and

(C) is either:

(i) a pre-existing foundation for which a professional engineer or architect licensed in Texas has issued written approval for the installation of a particular home, and the written approval shall be submitted to the Department with the installation report; or

(ii) installed in accordance with a custom designed stabilization system drawing that is stamped by a Texas licensed professional engineer or architect. A copy of the stabilization system drawing must be forwarded to the Department along with the installation report.

(b) When a home is installed on a stabilization system registered with the Department or a special stabilization system, the installer must follow the home manufacturer's DAPIA-approved installation instructions for any aspect of the installation that is not covered by the system's installation instructions or drawings.

(c) The installer must use stabilizing components that have the required capacity and install them according to the anchor or stabilizing component manufacturer's current installation instructions. All stabilizing components must be resistant to all effects of weathering including that encountered along the Texas gulf coast. Nonconcrete stabilizing components and systems for use within 1500 feet of the coastline shall be specifically certified for this use. Preservation treated (PT) wood components shall conform to the applicable standards issued by

the American Wood Preserver's Association and referenced by the latest edition of the International Residential Code.

(d) Site Preparation Responsibilities and Requirements:

(1) A consumer acquiring a manufactured home to be installed, new or used, is responsible for the proper preparation of the site where the manufactured home will be installed except as set forth in §80.57 of this title (relating to Generic Standards for Moisture and Ground Vapor Controls):

(2) Whenever a licensed retailer intends to sell a manufactured home, regardless of where it is located or is to be located, the retailer is required to give the consumer the Site Preparation Notice, for signature by the consumer, in the form set forth in §80.260(a)(1) of this title (relating to Required and Optional Forms) PRIOR to the execution of any binding sales agreement.

(3) Whenever a licensed installer proposes to move a used manufactured home, the installer is required to give the consumer the Site Preparation Notice, for signature by the consumer, in the form set forth in §80.260(a)(1) of this title (relating to Required and Optional Forms) PRIOR to entering into a binding agreement to move that home.

(e) If at the time of installation or within 90 days thereafter as stated on the contract, the retailer or installer provides the materials for skirting or contracts for the installation of skirting, the retailer or installer is responsible for installing any required moisture and ground vapor control measures in accordance with the home installation instructions, specifications of a registered stabilization system, or the generic standards and shall provide for the proper cross ventilation of the crawl space. If the consumer contracts with a person other than the retailer or installer for the skirting, the consumer is responsible for installing the moisture and ground vapor control measures and for providing for the proper cross ventilation of the crawl space.

(f) Clearance: If the manufactured home is installed according to the state's generic standards, a minimum clearance of 18 inches between the ground and the bottom of the floor joists must be maintained. In addition, the installer shall be responsible for installing the home with sufficient clearance between the I-Beams and the ground so that after the crossover duct prescribed by the manufacturer is properly installed it will not be in contact with the ground. Refer to §80.56 of this title (relating to Generic Standards for Multi-Section Connections Standards) for additional requirements for utility connections. It is strongly recommended that the installer not install the home unless all debris, sod, tree stumps and other organic materials are removed from all areas where footings are to be located.

(g) Drainage: The consumer is responsible for proper site drainage where the manufactured home (new or used) is to be installed unless the home is installed in a rental community. It is strongly recommended that the installer not install the home unless the exterior grade is sloped away from the home or another generally accepted method to prohibit surface runoff from draining under the home is provided. Drainage prevents water build-up under the home. Water build-up may cause shifting or settling of the foundation, dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors.

§80.57. Generic Standards for Moisture and Ground Vapor Controls.

(a) If the manufactured home is installed according to the state's generic standards and the space under the home is to be enclosed with skirting and/or other materials provided by the retailer and/or installer, the enclosure must meet the following requirements:

(1) At least one access opening that does not require the use of tools to gain access shall not be less than 18 inches in any dimension and not less than three square feet in area shall be provided by the installer. The access opening shall be located so as to enable, to the extent reasonably possible, the visual inspection of water supply and sewer drain connections.

(2) If a clothes dryer exhaust duct, air conditioning condensation drain, or combustion air inlet is present, the installer must pass it through the skirting to the outside.

(3) Crawl space ventilation must be provided at the rate of minimum 1 square foot of net free area, for every 150 square feet of floor area.

(4) At least six openings shall be provided, one at each end of the home and two on each side of the home. The openings shall be screened or otherwise covered to prevent entrance of rodents (note: screening will reduce net free area). For example, a 16'x76' single section home has 1216 square feet of floor area. This 1216 square feet divided by 150 equals 8.1 square feet or 1166 square inches of net free area crawl space ventilation.

(b) The generic ground vapor control measure shall consist of a ground vapor retarder that is minimum 6 mil polyethylene sheeting or its equivalent, installed so that the area under the home is covered with sheeting and overlapped approximately 12 inches at all joints. Any tear larger than 18 inches long or wide must be taped using a material appropriate for the sheeting used. The laps should be weighted down to prevent movement. Any small tears and/or voids around construction (footings, anchor heads, etc.) are acceptable.

(c) Notice: The Site Preparation Notice form to be given to the consumer is located in §80.260(a)(1) of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
Executive Director, Manufactured Housing Division of TDHCA
Texas Department of Housing and Community Affairs
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10 TAC §80.64, §80.66

The amended rules are adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adopted rules.

§80.64. Procedures for Alterations.

(a) No alteration, as defined in Chapter 1201 of the Standards Act, shall be made without prior written approval of the Department. A written request for any alteration approval shall be filed with the Department, except for the alterations which are pre-approved as de-

scribed in this section. Approval will be granted upon evidence that Federal standards are met. If the alteration is approved, the alteration shall be completed in accordance with the Department's approval and any requirements made as a condition of the approval. Following completion of an approved alteration, the retailer shall notify the Department in writing, and the Department may accept the certification of the retailer that the alteration was made as approved. The Department may inspect the home, as altered, to assure compliance with the applicable standards.

(b) If the sale of a home includes air conditioning, the selling retailer shall maintain in the sales file a record of the name and license number of the air conditioning contractor which installed the air conditioning system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. GENERAL REQUIREMENTS

10 TAC §§80.119 - 80.123, 80.125 - 80.133, 80.135

The new and amended rules are adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adopted rules.

§80.119. Installation Responsibilities.

(a) For new manufactured homes, the retailer is the installer and must warrant the proper installation of the home. If the retailer subcontracts with an independent licensed installer, then the subcontractor is jointly and severally liable for the portion of the installation that the subcontractor performed.

(b) For used manufactured homes, the person contracting with the consumer for the installation of the home is the installer and must warrant the proper installation of the home. If the contracting installer subcontracts with an independent licensed installer, then the subcontractor is jointly and severally liable for the portion of the installation that the subcontractor performed. The contracting installer is responsible to furnish the consumer with the installation warranty and site preparation notice. All verification and copies of the installation warranty and site preparation notice must be maintained in the installer's installation file for a period of no fewer than six (6) years from the date of installation.

(1) A person contracting directly with the consumer for only the transportation of the used home to a manufactured home site is not the installer if the person does not perform or contract to perform any installation functions. In this case, the installer is the person that performs any aspect of the placement and erection of the used home and its components on the stabilization system, whether temporary or permanent.

(2) The selling retailer may sell a used home and deliver possession to the consumer at the sales location (*e.g.*, F.O.B. the sales location). In this case, the retailer shall not perform any installation functions nor transport the home to the home site.

(c) The installer is fully responsible for the complete installation in accordance with all applicable requirements set forth in this chapter even though the installer may subcontract certain installation functions to independent contractors pursuant to §1201.102(b) of the Standards Act. It is unlawful for a subcontractor who is acting as an agent for a licensed installer to advertise and/or offer installation services to any person unless the licensed installer's name appears prominently in the advertisement.

(d) For each installation completed, the installer must complete a Notice of Installation (Form T) and submit the original, signed form with the required fee to the Department no later than the 15th day of the month after which the installation is completed. If an installer submits multiple installation reports at one time, a single payment for the combined fees may be submitted.

(e) The completed Notice of Installation (Form T) may not be combined with the application for Statement of Ownership and Location. If a party to the transaction requires a copy of the Notice of Installation, the word "COPY" must be conspicuously stamped, typed, or written on it.

(f) Electrical, fuel, mechanical, and plumbing system crossover connections for multi-section homes, and completion of drain lines underneath all homes in accordance with the requirements of this chapter are installer responsibilities and cannot be excluded by wording of the installation contract. The installation of air conditioning at the home site must be performed by a licensed air conditioning contractor. The installation and ventilation of skirting or other material that encloses the crawl space underneath a manufactured home is an installer responsibility, if it is part of the sales or installation contract.

§80.120. Manufacturer's Responsibilities.

Manufacturers licensed with the Department shall:

(1) Submit a monthly shipment report to the Department of all manufactured homes produced during the preceding month for shipment to any point in Texas.

(A) The report shall contain the following information:

(i) the complete HUD label number(s);

(ii) the complete serial number(s);

(iii) the license number of the retailer as assigned by the Department;

(iv) a designation as to single or multiple sections; and

(v) the name and address of the person to whom it was shipped.

(B) The manufacturer's monthly shipment report shall be filed with the Department by the 20th day of the month following the manufacture of the home and/or shipment.

(C) If a manufacturer has no sales or shipments to any person in the State of Texas during any month, the report must be filed stating such fact.

(2) Use the Manufacturer's Certificate of Origin (MCO) prescribed by the Department in §80.260(a)(17) of this title for homes shipped to retailers in Texas; and

(3) Supply to the Department current and revised copies of approved installation manuals as required by §80.53 of this title (relating to Requirements for Manufacturer's Designs and Installation Instructions).

§80.121. Retailer's Responsibilities.

(a) Manufactured housing retailers shall retain as part of each sales record and make available for copying and review by Department personnel, upon request during normal business hours, the following information:

(1) For all manufactured homes as applicable:

(A) name and address of the consumer and the date of purchase;

(B) verification that the consumer received the Formaldehyde Health Notice required by §1201.153 of the Standards Act;

(C) verification that the consumer was advised of the Wind Zone, thermal zone, and roof load zone for which the home was constructed. If this information is not available for a used home, the consumer will be advised of this fact and the used home will be disclosed as being constructed to Wind Zone I, thermal zone 1, and the roof load design for the South;

(D) verification that the consumer received the Wind Zone notice as required by §1201.256 of the Standards Act;

(E) verification that the consumer received the site preparation notice;

(F) verification that the consumer received written notice of the two (2) year limitation of notice for filing a claim with the Department;

(G) verification that the disclosure required in subsection (e) of this section was provided to the consumer prior to completing a credit application;

(H) verification that the disclosure required in subsection (f) of this section was provided to the consumer prior to completing a credit application;

(I) copies of the Notice of Installation (Form T) and attached documents;

(J) if the sale of a home includes air conditioning, the name and license number of the air conditioning contractor which installed the air conditioning system in accordance with §80.64(c) of this title (relating to Procedures for Alterations);

(K) complete records of all alterations, in accordance with 24 CFR §3282.254;

(L) copies of the completed application for Statement of Ownership and Location and all supporting documentation; and

(M) copies of the purchase contract identifying the retailer's bond for homes sold at a qualifying location.

(2) For all new manufactured homes:

(A) verification that the manufacturer's new home warranty and retailer's installation warranty were delivered to the consumer pursuant to §1201.352(c) of the Standards Act (does not apply to damage caused by a move); and

(B) verification of the date that the manufactured home information card was mailed to the manufacturer.

(3) For used manufactured homes:

(A) verification that the consumer received the written 60-day habitability warranty; and

(B) if the retailer contracted for the installation as a part of the sales agreement, verification that a copy or the general description of the retailer's installation warranty was given to the consumer prior to signing of any binding retail installment sales contract or other mutually binding agreement.

(C) On the sale of a used home, the retailer or broker must provide the disclosure statement in §80.260(a)(11) of this title.

(b) All verifications and copies of notices required by this chapter must be maintained in the retailer's sales file, and the sales file must be maintained for a period of not less than six (6) years from the date of sale. If a retailer has more than one sales location and wishes to maintain all of its records at a central location, it may do so provided that the retailer notifies the Department more than sixty (60) calendar days in advance that its records are being maintained at a central location in Texas by providing the address of such location. Absent such notice the records of a particular home must be maintained at the address where the home is in inventory and from which it was sold. If the retailer wishes to discontinue the centralization of its records or to change the address where its records are kept, the retailer must notify the Department more than sixty (60) calendar days in advance of the change of the location and the address and effective date of the new location.

(c) For homes manufactured on or after September 1, 1997, a manufactured housing license holder shall not contract for sale of any home installed in a wind zone, thermal zone, or roof load zone other than that allowed on the data plate.

(d) In a joint purchase, one consumer's signature is sufficient on any notice or disclosure statement as long as the consumer is on the sales documents.

(e) Section 162 Notice. Before accepting a completed credit application from a consumer, a retailer (or any salesperson or other agent acting on behalf of a retailer) shall provide the disclosure form in §80.260(a)(2) or (b)(1) of this title.

(1) The English version of Section 162 Notice form is located in §80.260(a)(2) of this title.

(2) The Spanish version of Section 162 Notice form is located in §80.260(b) of this title. The retailer is not required to provide the form in Spanish; however, the consumer may request a copy in Spanish from the retailer or from the Department.

(f) 163 Disclosure. In a chattel mortgage transaction in which the retailer is participating in any way, the retailer shall deliver to the consumer, before the first credit application, the disclosure form in §80.260(a)(3) of this title.

(g) If a retailer relies on a third party, such as a title company or closing attorney, to file with the Department the required forms necessary to enable the Department to issue a Statement of Ownership and Location to a consumer, the retailer must provide an instruction letter to that third party, advising them of their responsibilities to make such filings and the required timeframes therefor. This does not exculpate the retailer from responsibility. The retailer must retain with their sale

records a copy of that instruction letter and all documentation provided to such third party to enable them to make such filings.

(h) If any goods or services being provided by a retailer in connection with the sale and/or installation of a manufactured home are to be provided at a date after the installation, the retailer must disclose, in writing, the goods and/or services to be provided and a good faith estimate as to when they will be provided.

(i) If any goods with a retail value of more than $250 are to be provided in connection with the sale of a manufactured home and they are not specified on the data plate for the home, the retailer must describe them in the retail installment contract, purchase memorandum, or other sale document in sufficient detail to enable a third party to provide them under the responsibility of the retailer's surety bond should the retailer fail to provide them as agreed.

(j) A retailer accepting a deposit must give the consumer a written statement setting forth:

(1) The amount of such deposit;

(2) A statement of any requirements to obtain or limitations on any such refund;

(3) The name and business address of the person receiving such deposit; and

(4) The HUD label number(s), Texas seal number(s), serial number(s) or, for a new home that is being special ordered, detailed description of the manufactured home to which such deposit relates.

(k) Actions a retailer may not take:

(1) A retailer may not represent to a consumer that is purchasing a manufactured home with interim financing that the consumer will qualify for permanent financing if the retailer has any reason to believe that the consumer will not qualify for such permanent financing.

(2) A retailer may not increase the advertised price at which a manufactured home is to be sold based on the consumer's decision to make the purchase with or without financing provided by or arranged through the retailer.

(3) A retailer may not request or accept any document that is executed in blank or allow any alteration to a completed document without the consumer's initialing and dating such changes to indicate agreement to them. Where information is not available, a statement of that fact (i.e., TBD - to be determined) may be entered in the blank. A consumer must be provided with copies of all documents they execute.

(4) A retailer may not knowingly accept or issue any check or other form of payment appearing on its face to be a *bona fide* payment but known not to represent good funds.

(5) A retailer may not negotiate or offer a deposit refund of less than is required by the Act. However, a retailer may, by written agreement with the consumer retain the amount of the deposit used to pay legitimate third party costs actually incurred, such as credit report fees or courier fees.

(l) In order to comply with the requirements of §1201.107(d)(1) and (2) of the Standards Act, the applicable sales agreement must identify the surety bond that applies to the transaction and contain the statement set forth in §80.181(2) of this title.

§80.123. License Requirements.

(a) General License Requirements.

(1) Manufacturer. Any person constructing or assembling new manufactured housing for sale, exchange, or lease purchase within this state shall be licensed as a manufacturer. An application shall be submitted on the form required by the Department and shall be completed giving all the requested information. The application shall be accompanied by the required security, Articles of Incorporation or Assumed Name Certificate, and payment of the license fee. Every distinct corporate entity must be separately licensed. Each separate plant location operated by a license holder which is not on property which is contiguous to or located within 300 feet of the license holder's licensed manufacturing facility requires a separate license and security.

(2) Retailer. Any person engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering such for sale, exchange, or lease purchase to consumers shall be licensed as a retailer. An application for license shall be submitted on the form required by the Department and be completed giving all the requested information. The application shall be accompanied by the required security, Articles of Incorporation or Assumed Name Certificate, and payment of the license fee. No person shall be considered a retailer unless engaged in the sale, exchange, or lease purchase of two or more manufactured homes to consumers in any consecutive twelve (12) month period. Sales, exchanges, or lease purchases by any employee or agent of a business entity are deemed to be sales of the business entity. Each separate sales location which is not on property which is contiguous to or located within 300 feet of a licensed sales location requires a separate license and security.

(3) Broker.

(A) Any person engaged by one or more other persons to negotiate or offer to negotiate bargains or contracts for the sale, exchange, or lease purchase of a manufactured home to which a Statement of Ownership and Location has been issued and is outstanding shall be licensed as a manufactured housing broker. An application for license shall be submitted on the form required by the Department and be completed giving all the requested information. The application shall be accompanied by the required security, Articles of Incorporation or Assumed Name Certificate, and payment of the license fee. Each office location of the broker shall be licensed and proper security posted unless an office is on property which is contiguous to or located within 300 feet of an office licensed with the Department.

(B) A broker shall not maintain a location for the display of manufactured homes without being licensed as a retailer.

(4) Rebuilder. Any person who desires to be licensed by the Department to alter, repair, or otherwise rebuild a salvaged manufactured home, as that term is defined in §1201.461 of the Standards Act, within this state, shall be licensed. An application shall be submitted on the form required by the Department and shall be completed, giving all the requested information. The application shall be accompanied by the required license fee and Articles of Incorporation or Assumed Name Certificate.

(5) Installer.

(A) Every person who contracts to perform or performs installations shall submit the required security, complete the necessary license forms and any other information needed, and be issued a license prior to performing an installation function. The required license fee, as specified in §80.20 of this title (relating to Fees) must accompany the application for license and Articles of Incorporation or Assumed Name Certificate.

(i) Each applicant for license shall have public liability insurance coverage, including completed operations coverage in an amount of not less than $300,000 for bodily injury each occurrence and property damage insurance in an amount of not less than $100,000 each occurrence. A combined single limit of $300,000 will be considered to be in compliance with this section. If the applicant will be

engaged in the transportation of manufactured housing incidental to the installation, the applicant must also have motor vehicle liability insurance coverage in an amount of not less than $250,000 bodily injury each person, $500,000 bodily injury each occurrence, $100,000 property damage each occurrence. A combined single limit of $500,000 will be considered to be in compliance with this section. Cargo insurance on each home or transportable section of not less than $50,000 per towing motor vehicle is required.

(ii) At the time of initial license and on renewal, a certificate of insurance must be filed with the Department by the insurance carrier or its authorized agent certifying the kind, type and amount of insurance coverage and which provides for thirty (30) calendar days notice of cancellation. If the applicant does not provide proof of the required motor vehicle liability insurance and the cargo coverage, the applicant must sign an affidavit that the applicant will not engage in any transportation of manufactured housing. If the applicant transports only his/her own property, and furnishes the Department with an affidavit attesting to that fact, cargo coverage is not required.

(iii) An installer, also licensed as a retailer, may satisfy the insurance requirements by filing a certificate of insurance which shows that the license holder has motor vehicle-garage liability coverage including completed operations, and has dealer's physical damage (open lot) including transit insurance coverage in amounts not less than those set forth in clause (i) of this subparagraph.

(iv) If the required insurance coverage expires or is canceled, and proof of replacement coverage is not received prior to the expiration date or date of cancellation, the installer's license is automatically terminated.

(B) The installer responsible for the installation in accordance with the provisions of §80.119 of this title (relating to Installation Responsibilities) shall maintain a file containing a copy of the installation report as filed with the Department.

(6) Homeowner's Temporary Installation.

(A) A homeowner may apply for a temporary license as an installer for the purpose of installing such owner's used manufactured home. The application shall be submitted on a form and contain such information as required by the Department, and it must be accompanied by a cashier's check or money order payable to TDHCA in payment for the required fee, as specified in §80.20 of this title. The issuance of a homeowner's temporary installer's license by the Department shall not relieve any warranty responsibility required by the Standards Act except for damage or defects which may occur as a result of the installation of the home by the homeowner.

(B) The application must be accompanied by a certificate of insurance issued by the insurance carrier or its authorized agent to prove insurance coverage for the installation of the home as follows: public liability insurance coverage including completed operations in an amount of not less than $300,000 for bodily injury each occurrence and property damage insurance in an amount of not less than $100,000 each occurrence, for which a combined single limit of $300,000 will be considered to be in compliance with this section; and motor vehicle liability insurance coverage of not less than $250,000 bodily injury each person, $500,000 bodily injury each occurrence and $100,000 property damage each occurrence, for which a combined single limit of $500,000 will be considered to be in compliance with this section. A copy of the home manufacturer's installation instructions, custom designed installation instructions stamped by a Texas licensed professional engineer or architect, or an installation plan with details and specifications conforming to the state's generic standards shall accompany the application.

(C) Upon approval of the application, the homeowner will be issued a temporary license for the installation of that home set out in the application and a temporary installer's (TI) number. The temporary license shall be valid only for thirty (30) calendar days.

(D) The temporary installer's (TI) number must be displayed on the back of the home in letters and figures not less than 8 inches in height when the home is moved over the roads, streets, or highways in this state.

(7) Salesperson.

(A) The salesperson is an agent of the retailer or broker for whom sales or lease-purchases, or offers, are made. The retailer or broker is liable and responsible for the acts or omissions of a salesperson in connection with the sale or lease-purchase of a manufactured home. It is a violation of the Standards Act and this chapter for a retailer or broker of manufactured housing to employ a salesperson who is not licensed with the Department.

(B) An application for license must be made by every salesperson. Each applicant for a salesperson's license must file with the Department an application for license on a form provided by the Department containing:

(i) the full legal name, permanent mailing address, date of birth, telephone number, Texas driver's license number or Texas identification number, and social security number of the applicant;

(ii) places of employment of the applicant for the preceding three (3) years, providing the name of firm(s), address(es), and dates of employment; and

(iii) a statement that the applicant is the authorized agent for a licensed and bonded manufactured housing retailer; the statement shall be signed by the sponsoring retailer. If there is a change in name, address, telephone, email address, or employer, an amended application must be submitted to the Department within ten (10) calendar days of this change.

(C) Except as may otherwise be authorized, the fee for a salesperson's license shall be submitted to the Department in the form of a cashier's check or money order. Salesperson licenses shall be valid for a period of two years from the date of issuance.

(D) Payment of the renewal fee shall be made via Texas Online or submitted to the Department along with the completed license renewal notice prior to the expiration of the current license.

(E) Salespersons shall be issued a license card by the Department containing effective date and license number. The salespersons shall be required to present a valid license card upon request.

(8) Applicable License Holder Ownership Changes.

(A) A license holder shall not change the location of a licensed business unless the license holder first files with the Department:

(i) a written notification of the address of the new location;

(ii) an endorsement to the bond reflecting the change of location; and

(iii) the original license.

(B) The change of location is not effective until the notification and endorsement are received by the Department.

(C) For a change in ownership of less than fifty percent (50%) of the licensed business entity, no new license is required provided that the existing bond or other security continues in effect. How-

ever, the current Articles of Incorporation or Assumed Name Certificate must accompany the request.

(D) For a change in ownership of fifty percent (50%) or more, the license holder must file with the Department, along with the appropriate fee and Articles of Incorporation or Assumed Name Certificate:

(i) a license addendum by the purchaser providing information as may be required by the Department; and

(ii) certification by the surety that the bond for the licensed business entity continues in effect after the change in ownership; or

(iii) an application for a new license along with a new bond or other security and proof that the education requirements of §1201.113 of the Standards Act, have been met.

(b) Education Requirements for Manufacturers, Retailers, Brokers, and Installers.

(1) Effective September 1, 1987, all applicants for license, except salespersons, shall attend and complete 20 hours of educational instruction as required by the Standards Act and this chapter. A manufacturer may request a one-day in-plant training session be presented by the Department in lieu of completing the instruction requirement. The license will not be issued until the owner, partner, corporate officer, or other person who will personally have the day-to-day management responsibility for the business location attends and completes this educational requirement. This section shall not apply to the renewal of licenses, nor to the license of additional business locations.

(2) Approving a training program conducted by a nonprofit educational institution or foundation as sanctioned by §1201.104(c)(2) of the Standards Act.

(A) An organization requesting approval to conduct the educational course required by the Standards Act must file a course approval request and course materials at least ninety (90) calendar days before the date of the first scheduled presentation. The director shall deliver a written notice of approval or denial no later than thirty (30) calendar days after receiving the request. If denied, the requestor may resubmit the course with corrections. The director will deliver a written notice of approval or denial no later than fifteen (15) calendar days after receiving the re-submittal.

(i) Approval of Training Program: The director will approve the training program if the requirements in this subsection are met and the materials submitted comply with the required course topics in subparagraph (C) of this paragraph.

(ii) Denial of Training Program: The director will not approve the training program if the requirements are not met and the materials submitted do not comply with the required course topics in paragraph (3) of this subsection. The requestor will receive a written notice detailing the reason(s) for the denial. The requestor may re-submit the course with corrections as mentioned in subparagraph (A) of this paragraph.

(B) As a prerequisite for a license, the course must be twenty (20) hours in length and provide instruction in the law and consumer protection regulations.

(C) An educational training course shall consist of the following topics:

(i) Presentation of the Law and Rules.

(I) Occupations Code, Chapter 1201, the Standards Act

(II) Chapter 80, Texas Administrative Code, Administrative Rules

(III) Texas Finance Code (applicable sections)

(IV) Texas Transportation Code (applicable sections)

(V) Federal Truth -in-Lending Act

(VI) Property Code

(ii) Statement of Ownership and Location.

(I) Seals

(II) Application Fees

(III) Application Processing

(IV) Description of Forms

(V) Property Election

(iii) Licensing.

(I) Manufacturer Application Form Requirements

(II) Retailer Application Form Requirements

(III) Installer Application Form Requirements

(IV) Salesperson Application Form Requirements

(V) Broker Application Form Requirements

(VI) Salvage/Rebuilder Application Form Requirements

(VII) Insurance and Bond Requirements

(VIII) License Renewal and Revision Requirements

(IX) Sale of non-habitable homes

(X) Retailer and Installer Responsibilities

(iv) Installations.

(I) Anchoring, supporting, and multi-section connecting standards

(II) Requirements for Completing the Installation Inspection Report Form

(v) Consumer Complaints.

(I) Consumer Complaint Process

(II) Delivery of Warranty

(III) Correction Requirements

(IV) Requirements for Completing the Complaint Forms

(vi) Dispute Resolution.

(I) Dispute Resolution Process

(II) Texas Government Code, Chapter 2306

(III) Federal Trade Commission Manual: "How to Advertise Consumer Credit"

(IV) Business & Commerce Code, Deceptive Trade Practices (applicable sections)

(D) The training organization must provide each attendee of the class with written proof of having completed the entire 20 hour course.

(E) The primary administrator for the training program will be notified by the director of changes to the Law and Rules and the date that the changes will become effective.

(F) The director may revoke course approval for failure to comply with the standards or procedures set forth in this paragraph. Unless surrendered or revoked for cause, the approval will be valid for a period of two (2) years.

(3) Continuing Education Requirements for Salespersons.

(A) Acceptable evidence that the requirements of §1201.113(e) of the Standards Act have been satisfied would be a certificate, letter, or similar statement provided by the approved education provider indicating that the course was completed within the ninety (90) days allowed. Such evidence may be submitted by fax, mail, e-mail, or in person.

(i) For initial licensing, if evidence of attendance is not received by the Department's close of business on the ninety-fifth (95th) day after the effective date of the license, the Department will initiate the suspension process.

(ii) For license renewal, evidence of attendance with reference to license number must be received by the Department before a salesperson's license may be renewed.

(B) Approval of courses and providers. In order to be considered for approval by the Board to provide continuing education courses a party wishing to be considered for such approval must submit, for each course for which approval is sought, a letter application, accompanied by the nonrefundable processing fee, and the following:

(i) A narrative overview of the course, describing subject matter to be covered;

(ii) Brief biographies, including credentials, of each instructor;

(iii) A copy of any course materials to be used. If the course materials are deemed to be proprietary they should be placed in a separate envelope, marked confidential, and accompanied by a written statement as to why they should not be treated as open records. There is no assurance that such materials will ultimately be accorded any exemption from disclosure under the Open Records provisions of the Government Code. If the course is to be offered online, a hard copy of the material as well as an electronic version must be submitted.

(iv) A schedule of fees to be charged for the course;

(v) As such information becomes available, an indication as to the locations, times, and dates for offerings, or if provided online, instructions for how and when the course may be taken; and

(vi) Such other information as the Department may require.

(C) Once the staff determines that a request for approval is complete, that request will be placed on the next regularly scheduled meeting of the board of Directors for consideration. The staff will provide the board with a written recommendation on each such request. The staff will advise the applicant of the board's action within ten (10) business days of the date of the board meeting, including a written statement as to any limitations, conditions, or other requirements imposed.

(i) Approvals shall be for a period not to exceed two years. The Director may, at no cost, send a representative to attend any approved course to determine that the course is being taught in accordance with the terms of approval.

(ii) The Director may revoke or suspend approval of a course if the Director determines that the course is not being taught in accordance with the terms of approval or that the course is not being administered in accordance with the law or these rules. Any action to revoke or suspend such an approval is a contested matter under Chapter 2001, Government Code, and the party against whom revocation or suspension is sought may make a written request for a hearing before an Administrative Law Judge. If no such hearing is requested within thirty (30) calendar days after receipt of notice from the Director, the Director's order of suspension or revocation shall become final.

(c) License Application and Renewal.

(1) Application and Appeals.

(A) Initial application processing.

(i) It is the policy of the Department to issue the license within seven (7) business days after receipt of all required information and the following conditions have been met:

(I) all required forms are properly executed; and

(II) all requirements of applicable statutes and Department rules have been met.

(ii) License applications and accompanying documents received shall be processed and issued within seven (7) business days if all conditions for license have been met.

(iii) License applications and accompanying documents found to be incomplete or not properly executed shall be returned to the applicant with an explanation of the specific reason and what information is required to complete license. Upon receipt of all required information, the license will be issued within seven (7) business days.

(iv) Upon written request, the Department will call the license holder and provide the license number assigned.

(B) Appeals. Applicants may appeal any dispute arising from a violation of the time periods set for processing an application. An appeal is perfected by filing with the director a letter explaining the time period dispute. The letter of appeal must be received by the director no later than twenty (20) calendar days after the date of the letter of explanation from the Department outlined in subparagraph (A)(iii) of this paragraph. The Department will decide the appeal within twenty (20) calendar days of the receipt of the letter of appeal by the director.

(2) License Renewal Requirements. It is the responsibility of the license holder to renew the license prior to its expiration date.

(A) The Department will mail each license holder a renewal notice and application for renewal at least forty-five (45) calendar days prior to the date on which the current license expires. Notice will be mailed to the last known address indicated in Department records.

(B) In order to prevent the expiration of a license, a complete application for license renewal must be received by the Department prior to the date on which the current license expires.

(C) If an application for license renewal is received by the Department after the date on which the current license expires, the license will not be issued without the required late fees identified in §1201.116(d) and (e) of the Standards Act.

(3) Payment of license fees.

(A) All required fees must be paid in order to obtain a valid license, including a renewal license, from the Department.

(B) Any license issued by the Department is void and of no effect if based upon a check or other form of payment that is later returned for insufficient funds, closed account, or other reason, regardless of whether the Department notifies the applicant of the insufficiency of payment or the invalidity of the license.

(C) It is the applicant's responsibility to ensure that all licensing fees are paid in valid U.S. funds.

(d) Denial, suspension, revocation, and appeals.

(1) Denial, Suspension, Renewal Denial, or Revocation of License Relating to Repeat Violations of the Standards Act or Department Rules.

(A) The following criteria shall be utilized to determine whether an applicant shall be issued or renewed a license if the applicant within the last two years from the date of the application has:

(i) two Agreed Final Orders of the same kind or type of violations; or

(ii) one Final Order of the same kind or type of violations.

(B) If the Department suspends, revokes, or denies renewal of a valid license, or denies a person's license or the opportunity to be examined for a license in accordance with this subsection because of the person's prior violations history, the Department shall:

(i) notify the person in writing stating reasons for the suspension, revocation, renewal denial, denial of disqualification; and

(ii) offer the person the opportunity for a hearing on the prior violation history.

(2) Denial, Suspension, Renewal Denial, or Revocation of License relating to the history of non-compliance with the Standards Act and Rules.

(A) The Department will consider the background of the applicant, license holder, sole proprietor, partner officer, managing employee, chief executive officer, chief executive operating officer, and directors of a corporation.

(B) In the evaluation the Department will consider the non-compliance history with the Standards Act and this chapter and will comply with the Texas Government Code, Chapter 2001, in proceeding with denial, suspension, or revocation of a license.

(3) Denial, Suspension, Renewal Denial, or Revocation of License Relating to Criminal Background.

(A) The following criteria shall be utilized to determine whether an applicant shall be issued a license if that applicant states in his/her application for said license that he/she has a record of criminal convictions within five (5) years preceding the date of the application:

(i) the nature and seriousness of the crime;

(ii) the relationship of the crime to the intended manufactured housing business activity;

(iii) the extent to which a license holder might engage in further criminal activity of the same or similar type as that in which the applicant previously had been involved;

(iv) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the functions and responsibilities of the license holder's occupation or industry; and

(v) whether the offenses were defined as crimes of moral turpitude by statute or common law, from Class A misdemeanors to first, second, and third degree felonies carrying fines and/or imprisonment or both. Special emphasis shall be given to the crimes of robbery, burglary, theft, embezzlement, sexual assault, and conversion.

(B) In addition to the factors that may be considered in subparagraph (A) of this paragraph, the Department, in determining the present fitness of a person who has been convicted of a crime, may consider the following:

(i) the extended nature of the person's past criminal activity;

(ii) the age of the person at the time of the commission of the crime;

(iii) the amount of time that has elapsed since the person's last criminal conviction;

(iv) the conduct and work activity of the person prior to and following the criminal conviction;

(v) evidence of the person's rehabilitation or attempted rehabilitation effort while incarcerated or following release; and

(vi) other evidence of the person's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(C) It shall be the responsibility of the applicant to the extent possible to secure and provide to the Department the recommendations of the prosecution, law enforcement, and correctional authorities as required by this subsection.

(D) The applicant shall furnish proof in any form, as may be required by the Department, that he/she has maintained a record of steady employment and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which the applicant was convicted.

(E) If the Department suspends or revokes a valid license, or denies a person a license or the opportunity to be examined for a license in accordance with this subsection because of the person's prior conviction of a crime and the relationship of the crime to the license, the Department shall:

(i) notify the person in writing stating reasons for the suspension, revocation, denial, or disqualification; and

(ii) offer the person the opportunity for a hearing on the record.

(4) A proceeding to suspend a salesperson's license may be initiated upon failure by a salesperson to fulfill the education required by §1201.113(e) of the Standards Act.

§80.125. Advertising Regulations.

(a) A license holder is prohibited from publishing or distributing any form of advertising which is false, deceptive, or misleading.

(b) There are no restrictions on:

(1) the use of any advertising medium;

(2) a person's personal appearance or the use of a person's voice in an advertisement;

(3) the size or duration of an advertisement; or

(4) the use of a trade name in an advertisement.

(c) Any advertisement must comply with applicable federal and state laws.

(d) Any advertisement by a retailer, broker, or installer (other than a sign/display advertisement at a licensed location, point of sale literature, or a price tag) must disclose the license number of the person who is advertising.

(e) Any advertisement by a salesperson must disclose the name and license number of their sponsoring retailer identified on their valid salespersons license.

(f) Where no consumer protection purposes would be served by requiring the license number to be disclosed, the director may grant exceptions to subsections (d) and (e) of this section based on the director's approved format. Exceptions will be posted on the Department's website.

§80.127. Sanctions and Penalties.

(a) In accordance with the provisions of Government Code, Chapter 2306, §2306.604, the director may assess and enforce penalties and sanctions against a person who violates any applicable law, rule, regulation, or administrative order of the Department. The director may:

(1) issue to the person a written reprimand that specifies the violation;

(2) revoke or suspend the persons license;

(3) place on probation a person whose license is suspended; or

(4) assess an administrative penalty in an amount not to exceed $1,000 for each violation in lieu of, or in addition to, any other sanction or penalty.

(b) In determining the amount of a sanction or penalty, the board and the director shall consider:

(1) the kind or type of violation and the seriousness of the violation;

(2) the history of previous violations; the kind or type of previous violations, and the length of time between violations;

(3) the amount necessary to deter future violations;

(4) the efforts made to correct the violation or previous violations; and

(5) any other matters that justice may require.

(c) Violations will be subject to sanctions and penalties as set forth in Government Code, Chapter 2306, §2306.6023. Revocation or suspension of a license may be assessed only for multiple, consistent, and/or repeated violations. For first-time violations of a Department rule which does not relate to the construction or installation of the home, a voluntary letter of compliance will be issued in lieu of other sanctions.

(d) When a licensee first receives written notification of a claim for warranty service, the licensee must respond timely to the request. A failure to do so shall constitute a violation of these rules.

(1) It is presumed that a response was timely if the required warranty service is provided within forty (40) calendar days from the date of the request; provided, however, immediate corrective action is required if the matter involves an imminent safety hazard.

(2) The time to respond to a request for warranty service may be extended by the Director in response to a request setting forth good cause for the extension. Any such request must be made to the Director prior to the expiration of the allotted time for response. Requests may be made by U.S. First Class mail, by FAX, or by e-mail, or, if followed with written confirmation sent U.S. First Class mail, by telephone.

(3) If, after reasonable investigation, the licensee disputes whether warranty service is required and the licensee is unable to resolve the matter by agreement with the consumer, the licensee may request that the Department perform an inspection of the home. The running of the time to respond to the request for warranty service will be suspended from the time the request for inspection is received until the Department performs the inspection and issues its findings. When the Department concludes its review it will work with the affected licensee(s) and consumer(s) to agree upon a reasonable time to address its findings. In the event the parties cannot agree on a reasonable time, the Director shall issue a revised order assigning a time for compliance. Any such order shall be subject to appeal and a hearing. Any such hearing shall be a contested case under Tex.Gov.Code, Chapter 2001.

(e) All written notices and preliminary reports of violations shall specify in detail the particular law, rule, regulation, or administrative order alleged to have been violated along with a detailed statement of the facts on which the allegation is based.

(f) The respondent in an administrative hearing shall be entitled to due process and a hearing under the provisions of Government Code, Chapter 2001 and Chapter 2306. The respondent and the director may enter into a compromise settlement agreement in any contested matter prior to signing of the final order.

(g) A violation that constitutes an imminent threat to health or safety may be a basis for pursuit of maximum statutory penalties and/or suspension or revocation of licenses as provided in the Standards Act regardless of whether it is a first or reoccurring occurrence.

(h) Anytime the record indicates that there is a high likelihood that a licensee's violation is a direct result of a systemic problem, it is appropriate to request the licensee to develop a plan to prevent future occurrences. Undertaking to develop such a system is an appropriate mitigating factor to be taken into account in determining what penalty to pursue.

(i) Any and all penalties are IN ADDITION to full compliance with the Standards Act and Rules (i.e., full, prompt corrective action, restitution, or whatever else the Standards Act and rules would have required in the first place). Failure to provide such compliance on a timely basis, as specified in the applicable order, will be deemed to be a violation of the order and serve as a basis for pursuing additional administrative action, including the assessing of additional penalties and the pursuit of suspension or revocation of licenses.

(j) The Enforcement Matrix is located in §80.240(a)(12) of this title.

§80.128. Arbitration Rules.

(a) Definitions for Arbitration. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) Authorized representative--An attorney authorized to practice law in the State of Texas or a person designated by a party to represent the party.

(2) Award--The written decision of the arbitrator.

(3) Chief judge--The chief administrative law judge of the State Office of Administrative Hearings (SOAH) or his/her designee.

(4) Department--The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA).

(5) Dispute--The factual and/or legal controversy including the amount of the claim.

(6) Manufactured Homeowners' Recovery Trust Fund (Fund)--A special fund reserved for the payment of valid consumer claims and other authorized expenses of the Department.

(7) Party/Parties--Consumer, manufactured housing license holder of the Department, or a surety company, or the Department in cases that potentially impact the Fund, and persons who hold, or have previously held, a security interest in the manufactured home, and any other person involved in the dispute who agrees to the arbitration.

(8) Surety bond--A bond or security filed with the Department which shall be open to successive claims.

(9) Surety--Person or organization which undertakes to pay money or perform another act if his principal fails to do so.

(b) Election of Arbitration and Options.

(1) The Department finds that the manufacture and sale of manufactured homes affects interstate commerce; accordingly, the parties may agree on binding arbitration under Title 9, United States Code.

(2) The binding arbitration shall not supersede nor interfere with the Department's informal dispute resolution process. The parties must submit all disputes involving warranties to the Department for processing through the informal dispute resolution process.

(3) The parties may elect to use private, local, regional, or national arbitration services or may select arbitrators proposed by the SOAH as set forth in this section. This election must be set forth in the written agreement for binding arbitration.

(4) Arbitrators shall be selected by mutual agreement of the parties or in accordance with the specific provisions of the written agreement for binding arbitration.

(c) Qualifications for Arbitrators. Unless provided by the SOAH, potential arbitrators must have the following minimum standards:

(1) at least five (5) years of experience in the legal profession; or

(2) at least five (5) years experience in the resolution of claims with experience as a presiding officer; or

(3) at least ten (10) years of experience in the regulation of the manufactured housing industry; and

(4) the attributes necessary to be a successful arbitrator, including expertise, honesty, integrity, impartiality, and the ability to manage the arbitration process.

(d) Awards.

(1) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable within the scope of the parties, including, but not limited to, specific performance of a contract. However, the award must be consistent with applicable state and federal law, including the Standards Act, Government Code, Chapter 2306, Title 9, United States Code, and this chapter.

(2) The award shall be based on the facts established in the arbitration proceeding, in the opinion of the arbitrator or a majority of the arbitrators, including stipulations of the parties and on the state and federal statutes and formal rules and regulations, as properly applied to those facts.

(3) Subject to the limitations set forth in this section, the arbitrator may assess arbitration fees, expenses, and compensation.

(4) If there is more than one arbitrator, all decisions must be made by a majority.

(5) The award must:

(A) be in writing;

(B) be dated and signed by the arbitrator or a majority of the arbitrators; and

(C) state the basis of, and the rationale for, the award.

(6) The award is final and binding on all parties. Parties may apply to the state or federal district courts for confirmation, vacation, modification, or correction of the award only to the extent allowed under Title 9, United States Code.

(7) Solely for the purpose of correcting clerical errors, the arbitrator retains jurisdiction of the award for twenty (20) calendar days after the date of the award.

(e) Duties of the Arbitrator.

(1) The arbitrator shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence and shall protect the interests of all parties.

(2) If the dispute may involve the Fund, the arbitrator shall notify the Department in writing as soon as she/he has knowledge of this fact and shall provide the Department the opportunity to introduce evidence or present arguments relating to the claim against the Fund.

(3) Copies of the award shall be served on all parties and to the Department.

(f) Costs of Arbitration.

(1) The costs of arbitration shall be paid by the parties. The arbitrator shall apportion the costs between the parties as in her/his discretion is fair, just, and equitable, subject to the limitation of consumers' costs in this subsection.

(2) The costs of arbitration to the consumer are limited to a maximum of:

(A) $250 if the claims for damages do not exceed $50,000;

(B) $500 if the claims for damages exceed $50,000 but do not exceed $250,000; or

(C) $1,000 if the claims for damages exceed $250,000.

(3) The costs of arbitration shall include the fee or fees for the arbitrator or arbitrators and all incidental expenses directly related to the conduct of the arbitration proceeding.

(4) Subject to the limitation of consumers' costs in this subsection, costs shall be paid in accordance with the rules of the arbitrator, or if the SOAH is selected to handle the arbitration, in accordance with the provisions of subsection (j) of this section.

(g) Notice To Department. All notices required to be sent to the Department shall be sent to TDHCA, Manufactured Housing Division, P. O. Box 12489, Austin, Texas 78711.

(h) Notice To Surety Companies. Upon receipt of a notice of intent to arbitrate, the Department shall furnish the selected arbitrator with a list of the surety companies of the license holders involved in

the dispute to be given notice of the proceeding and an opportunity to participate.

(i) Arbitration Not Using SOAH. The provisions of this subsection relate only to arbitrations for which the parties have agreed to use the services of a private, local, regional, or national arbitration service.

(1) Subject to the provisions of subsections (a)-(h) of this section, the parties shall follow the rules of the applicable arbitration service.

(2) The party requesting the arbitration shall file a written notice of intent to arbitrate with the Department. The written notice shall:

(A) contain the name, address, telephone and facsimile number of the selected arbitrator or arbitrators and, if applicable, the arbitration organization through which the arbitration will be conducted;

(B) contain a description of the nature of the dispute and the remedy sought along with a description of the manufactured home by HUD/Seal number and serial number and the date of sale or occurrence; and

(C) have attached a copy of the written agreement for the binding arbitration.

(j) Arbitration Using SOAH. The provisions of this subsection relate only to arbitrations for which the parties have agreed to use the services of SOAH. Subject to the provisions of subsections (a)-(h) of this section, the parties shall follow these additional rules.

(1) A written notice of intent to arbitrate shall be filed with the Manufactured Housing Division of the Department and all involved parties by certified mail, return receipt requested. This notice of intent shall include a written statement that contains the following:

(A) a statement that the parties have agreed in writing to submit their dispute to arbitration under these rules;

(B) the nature of the dispute that is being submitted to arbitration, including a complete description of the manufactured home by HUD/Seal and serial number, and date of sale or occurrence;

(C) a brief description of the factual and/or legal controversy, including the amount in controversy, if any;

(D) the remedy sought;

(E) any special information that should be considered in compiling a panel of potential arbitrators; in the event the parties fail to indicate the number of arbitrators to be used, the dispute shall be heard and determined by one arbitrator;

(F) a statement that the hearing locale shall be determined by the arbitrator pursuant to paragraph (14)(D) of this subsection;

(G) a list of all parties, and their attorneys or representatives, including addresses, telephone and facsimile numbers;

(H) a nonrefundable filing fee of $100 made payable to the Department;

(I) an estimate of length of the hearing in hours. This estimate must be approved by the Department before arbitration can begin; and

(J) a deposit equal to 150% of the estimated cost of the hearing, payable to the Department. This deposit is calculated by multiplying the estimated length of number of hearing hours by $70. This figure is then multiplied by 1.5, and the product multiplied by the number of arbitrators to be used.

(2) Costs of Arbitration.

(A) The $100 filing fee is nonrefundable.

(B) Each arbitrator's fee is not to exceed $70 an hour for case preparation, travel, pre-hearing conferences, hearings, preparation of the Award, and any other required post-hearing work.

(C) The unused portion of the deposit shall be refunded by the Department after an accounting from the arbitrator.

(D) If the cost of the arbitration exceeds the deposit of the estimated cost, the Department shall invoice the appropriate parties and collect any monies due the Department.

(E) All fees and deposits are payable to the Department at P. O. Box 12489, Austin, Texas 78711.

(F) The Department shall distribute arbitration fees to SOAH in response to monthly billing statements.

(3) Initiation of Arbitration.

(A) Immediately upon receipt of notice of intent to arbitrate, the filing fee, and the deposit of estimated cost, the Department shall forward the information to SOAH so that arbitration can be initiated. The Department shall furnish SOAH with a list of the surety companies of the license holders involved in the dispute so that they may be given notice of the arbitration and an opportunity to seek to be made parties of the arbitration. Also the Department shall furnish SOAH an accounting of the filing fee and deposit of the estimated cost. The case shall be file stamped and given a SOAH docket number which identifies it as a case submitted for arbitration. The docket number will be used on all subsequent correspondence and documents filed with SOAH relating to this arbitration.

(B) The party that did not initiate the arbitration must file an answering statement with SOAH within ten (10) calendar days after receipt of the notice of intent from the electing party. That answering statement shall include a statement that the party agrees to arbitrate and an indication of whether the party agrees or disagrees with the statements in the initial notice of intent to arbitrate.

(4) Changes of Claim. If either party desires to make any new or different claim, it shall be made in writing and filed with SOAH. The other party shall have ten (10) calendar days from the date of such mailing in which to file an answer with SOAH. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

(5) Filing and Service of Documents.

(A) All documents filed by either party with SOAH shall be simultaneously served on the other parties, using the same method of service, if possible. Documents required to be filed with SOAH shall be delivered to the docket clerk before 5:30 p.m. local time. The time and date of filing shall be determined by the file stamp affixed by the SOAH docket clerk.

(B) Service may be made by first class mail, overnight courier, or certified mail return receipt requested to the party or its representative at its last known address. Documents containing twenty (20) or fewer pages, including exhibits, may be filed with SOAH by electronic transmission according to requirements set out in its rules. All documents served on another party shall have a certificate of service signed by the party or its representative that certifies compliance with this rule. A proper certificate shall give rise to a presumption of service.

(C) If any document is sent to the SOAH clerk by certified mail or first class mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail on or before the last day for filing same, and it is received within three (3) business days of the filing date, it shall be deemed properly filed.

(D) Documents filed by facsimile that are received at SOAH after 5:30 p.m. shall be deemed filed the first day following that is not a Saturday, Sunday, or official state holiday.

(6) Selection of Arbitrator.

(A) Any Administrative Law Judge (ALJ) employed by SOAH may be selected as an arbitrator. The parties may propose the name of a particular ALJ to arbitrate in a particular case in the notice of intent to arbitrate. However, the usual procedure will be for SOAH to provide the parties with a list of potential arbitrators, for selection to be made as described in subparagraph (B) of this paragraph.

(B) SOAH will provide a list of potential arbitrators to the parties in the case. The list of potential arbitrators in each case will be created by selecting persons employed as an ALJ at SOAH, giving due regard to the complexity of the dispute, the expertise needed to understand the dispute, the experience and training of the proposed arbitrators, and the requests of the parties concerning the location of the hearing.

(C) SOAH shall send each party an identical list of persons qualified to serve as an arbitrator in the dispute within ten (10) calendar days after receipt of the notice of intent to arbitrate by SOAH. SOAH will also give the parties a copy of the resumes of these persons. The number of persons on the list shall be equal to the sum of the number of parties involved in the arbitration plus the number of arbitrators agreed to be used.

(D) Each party shall have ten (10) calendar days from the transmittal date to strike one name. The remaining names should be numbered in order of preference, if such preference exists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. It is not necessary for the parties to exchange the name of the candidate that they are striking, nor will those names be disclosed to the candidates.

(E) SOAH will notify the parties of the arbitrator or arbitrators selected.

(7) Disclosure Requirements and Challenge Procedure.

(A) A potential arbitrator must not become or continue to be the arbitrator in any dispute if she/he believes or perceives that participation as an arbitrator would be a conflict of interest. A potential arbitrator must disclose any bias or any financial or personal interest she/he may have in the result of the particular arbitration as well as any past or present relationship with the parties, their principals, or their representatives.

(B) The duty to disclose is a continuing obligation throughout the arbitration process.

(C) Upon receipt of such information from the arbitrator or another source, SOAH shall communicate the information to the parties and, if appropriate, to the arbitrator and others. Upon objection of a party to the continued service of an arbitrator, the chief judge shall determine whether the arbitrator should be disqualified and shall inform the parties of his/her decision, which shall be conclusive.

(8) Vacancies. If for any reason an arbitrator is unable to perform the duties of the office, the chief judge may, on proof satisfactory to him/her, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of this chapter for initial appointment of an arbitrator.

(9) Qualifications of Arbitrators.

(A) The chief judge shall designate impartial third parties who shall be subject to the standards and duties prescribed by the applicable sections of the Civil Practices and Remedies Code (CPRC), and who shall have the qualified immunity prescribed therein.

(B) Potential arbitrators shall have a current resume on file, available to persons interested in utilizing the arbitration process, that shows her/his experience, education, professional licenses and certifications, and professional associations and publications.

(10) Record. The Arbitrator may make a tape recording of the proceeding which may be destroyed after the time for final appeal has passed.

(11) Interpreters. Any party intending to use an interpreter for themselves or any of their witnesses must provide the other parties notice of their intent to use an interpreter and the identity of the interpreter at least thirty (30) calendar days prior to the arbitration. The other parties may file objections to the use of that interpreter which will be ruled upon by the arbitrator or have present their own interpreter selected and paid for by them. Any other party retaining an interpreter in response to another party's designation of their intent to use an interpreter must notify the other parties within fifteen (15) calendar days prior to the arbitration proceeding of the identity of the interpreter.

(12) Duties of the Arbitrator. In addition to the duties set forth in subsection (e) of this section, the arbitrator:

(A) shall notify the Department when the arbitrator's fees and expenses have exceeded the deposit estimated by the electing party so the Department can collect additional expenses; and

(B) shall not issue an Award until notified by the Department in writing that all monies have been received by the Department as described in subsection (j)(2) of this section.

(13) Communication of Parties with Arbitrator. The parties shall not communicate with the arbitrator concerning the issues of the dispute other than at an oral hearing, or through properly filed documents, unless the parties and the arbitrator agree otherwise.

(14) Date, Time, and Place of Hearing.

(A) The arbitration hearing shall be scheduled to begin no later than the ninetieth day after the date that the arbitrator is selected.

(B) The arbitrator shall set the date, time, and place for each hearing. She/he shall send a notice of hearing to the parties at least thirty (30) calendar days in advance of the hearing date, unless otherwise agreed to by the parties.

(C) The arbitrator may grant a continuance of the arbitration at the request of any party.

(D) All hearings shall be held in Austin or in the region where one or more parties are located, as determined by the arbitrator. Preference will be given to using government facilities.

(15) Representation. Any party may be represented by counsel or other authorized representative.

(16) Public Hearings and Confidential Material. The arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

(17) Preliminary Conference. The arbitrator may set a preliminary conference and may require parties to file a statement of position prior to that conference.

(18) Exchange of Information. By the thirtieth day after the date SOAH mailed notice to the parties of the name of the appointed arbitrator, the parties shall have exchanged the following information:

(A) list of witnesses that a party expects to call identifying the subject matter on which the witness may testify; and

(B) copies of documents or other tangible things relevant to the dispute.

(19) Discovery. The arbitrator may authorize discovery upon a showing of good cause. Parties are to voluntarily disclose information related to the dispute being arbitrated, as provided in paragraph (18) of this subsection.

(20) Control of Proceedings. The presiding arbitrator shall exercise control over the proceedings, including but not limited to, determining the consequences of any party's failure to comply with these rules and/or the rulings of the arbitrator, the manner and order of interrogating witnesses and presenting evidence so as to:

(A) make the interrogation and presentation effective for the determination of the truth;

(B) avoid needless consumption of time; and

(C) protect witnesses from harassment or undue embarrassment.

(21) Evidence.

(A) The parties may offer evidence as they desire and shall produce additional evidence that the arbitrator considers necessary to understand and resolve the dispute. However, any documentary evidence not timely exchanged between the parties before the hearing will be excluded from consideration unless good cause is shown.

(B) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to the rules of judicial proceedings is not required. The Texas Rules of Civil Evidence are not binding on the arbitrator but may be used as a guideline.

(C) All privileges recognized by the Texas Rules of Civil Procedure may be invoked to protect privileged documents. If requested, the arbitrator shall decide whether a document is in fact privileged.

(D) Each party shall produce any witnesses under its control without the necessity of a subpoena. Individuals may be compelled by the arbitrator, as provided in Title 9, United States Code §7, to attend and give testimony or to produce documents at the arbitration proceeding or at a deposition authorized under subsection (j)(19) of this section.

(22) Witnesses. Witnesses shall testify under oath. Testimony may be presented in a narrative, without strict adherence to a "question and answer" format.

(23) Exclusion of Witnesses. Any party may request that the arbitrator exclude witnesses from the hearing except when they are testifying. If such a request is made, the arbitrator shall instruct the witnesses not to discuss the case outside the official hearing other than with the designated representatives or attorneys in the case. However, an individual who is a party or any other party representative shall not be excluded under this rule. A witness or other person violating these instructions may be punished by the exclusion of evidence as the arbitrator deems appropriate.

(24) Evidence by Affidavit. The arbitrator may receive and consider evidence of witnesses by affidavit. Affidavit testimony must be filed with the arbitrator and served on the other party no later than thirty (30) calendar days before the hearing. The other party will have fifteen (15) calendar days to file any objection to the admissibility of the affidavit or to file controverting affidavits. The arbitrator shall give such evidence only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

(25) Order of Proceedings.

(A) The arbitrator may allow each party to make an opening statement, clarifying the issues involved.

(B) The parties shall present the evidence supporting their respective claims in the order directed by the arbitrator. Witnesses for each party shall answer questions propounded by the other parties and the arbitrator.

(C) Exhibits offered by either party may be received in evidence by the arbitrator.

(D) The parties may make oral closing statements or, at the request of the arbitrator, may submit arguments in writing.

(26) Attendance Required.

(A) The arbitrator may proceed in the absence of any party or representative of a party who, after notice of the proceeding, fails to be present or to obtain a continuance.

(B) An arbitrator may not make an award solely on the default of a party and shall require the party who is present to submit evidence, as required by the arbitrator, before making an Award.

§80.130. Delivery of Warranty.

(a) The written warranty that the used manufactured home is habitable as per §1201.455 of the Standards Act, shall have been timely delivered if given to the homeowner at or prior to possession or at the time the applicable sales agreement is signed.

(b) The written manufacturer's new home construction warranty per §1201.351 of the Standards Act, shall be timely delivered if given to the homeowner at or prior to the time of initial installation at the consumer's homesite.

(c) For secondary installations, the "installer" as defined in §80.119(a) of this title (relating to Installation Requirements) shall deliver the installation warranty required by §1201.361 of the Standards Act, to the consumer at the time of the installation at the consumer's homesite. The installer must keep a copy of the installation warranty and proof of delivery to the consumer in a permanent file for review by the Department.

§80.131. Correction Requirements.

(a) The retailer, installer, or manufacturer shall take immediate corrective action when notification is received from a consumer and the nature of the complaint indicates an imminent safety hazard or serious defect.

(b) Except as provided in subsection (a) of this section, manufacturers, retailers, and installers shall perform their obligations in accordance with their respective written warranty within a reasonable period of time. A reasonable period of time is deemed to be forty (40) calendar days following receipt of the consumer's written notification unless there is good cause requiring more time. The consumer's written notification must be given within the one (1) year warranty period for new homes and for used homes within sixty-five (65) calendar days after the date of the sale or installation, whichever is later.

(c) The manufacturer, installer, and retailer shall make available for review by Department personnel, records relating to their respective warranty responsibilities, to assure that warranty work has been accomplished and that warranty work has been done in accordance with design or standards criteria and properly completed.

§80.132. Procedures for Handling Consumer Complaints.

In order to comply with §1201.002 of the Standards Act, to provide for the protection of the citizens who purchase manufactured housing and to provide fair and effective consumer remedies, the following procedures will be followed:

(1) On initial written contact by a consumer, the Department will attempt to verify if the consumer has a valid complaint that is subject to the Department's authority.

(A) If the consumer has not previously notified the manufacturer, retailer or installer, the Department will forward the written notification to the manufacturer, retailer, or installer and give the license holder a reasonable amount of time to make repairs.

(B) If the consumer has previously provided written notification to the manufacturer, retailer or installer of the need for warranty service or repairs, but believes such has not been completed in a satisfactory manner, the Department shall mail a complaint form to the consumer with instructions to complete it and return it to the Department. On receipt of the complaint form, the Department will make a determination regarding whether or not to open a consumer complaint. If a consumer complaint is opened, the Department shall forward copies of the complaint form to the manufacturer, retailer and/or installer, as appropriate. The Department shall also include in the mail out the "Manufacturer's Response Form" or "Retailer's Response Form," as appropriate, which must be completed and returned to the Department within ten (10) business days. The Department shall perform a home inspection, if required. If a home inspection is performed, the Department will assign responsibilities for repair, and notify the manufacturer, retailer, installer, and consumer of their responsibilities to complete such warranty or service repair in accordance with §80.131(b) of this title (relating to Correction Requirements).

(2) The Department shall make a consumer complaint home inspection upon request.

(A) Consumer Request. The consumer may, at any time, request that the Department perform a consumer complaint home inspection. A written complaint regarding failure to provide warranty work is deemed to be a request for a consumer complaint inspection. No written complaint form is required if a possible imminent safety hazard exists.

(B) Industry Request. Manufacturer or retailer requests for a consumer complaint home inspection must be in writing on such form as the Department may require, shall identify the home by HUD label and serial number(s), and shall provide the necessary information for the Department to contact the consumer and determine the physical location of the home. The manufacturer or retailer may request a consumer complaint home inspection if the manufacturer or retailer:

(i) believes that the consumer's complaints are not covered by the respective written warranty, or implied warranties; or

(ii) believes that the warranty service was previously properly provided; or

(iii) has a dispute as to the respective responsibilities pursuant to the warranties.

(C) The Department will perform the inspection within thirty (30) calendar days from the date an inspection is requested. The inspector shall:

(i) inspect all items included in the consumer complaint filed with the Department and any additional items identified by the consumer prior to completion of the inspection. Any items identified by the consumer after the home inspection is complete shall be handled as a new consumer complaint.

(ii) For each item inspected, the inspector shall review the manufacturer's determinations in accordance with 24 CFR §3282.404(b) and evaluate whether or not the item is covered by either the manufacturer's, retailer's, or installer's warranty and, if covered, by which of the respective warranties. In addition, the inspector shall categorize items as follows:

(I) The item is a warranty item (also identify which warranty);

(II) The result of normal wear and tear, not a warranty item;

(III) The result of owner abuse neglect or modification, not a warranty item;

(IV) Within commercially acceptable standards, not a warranty item;

(V) Meets the current federal and state standards, not a warranty item;

(VI) Cosmetic, not a warranty item;

(VII) License holder not notified within warranty period;

(VIII) Unable to determine, additional information is required; or

(IX) Other (explain).

(D) Within ten (10) business days following the consumer complaint home inspection, the Department shall mail its written report and orders (includes amended reports and orders), if any, to the consumer, manufacturer, retailer, and installer by certified mail, return receipt requested.

(3) When service or repairs are completed following any notice or orders from the Department pursuant to paragraph 2(D) of this section, the manufacturer, retailer, and/or installer shall forward to the Department copies of service or work orders reflecting the date the work was completed, or other documentation to establish that the warranty service or repairs have been completed. If the consumer refuses to sign the service or work order, the license holder shall note this fact on the service or work order. These service or work orders must be received by the Department within ten (10) calendar days after the expiration of the period of time specified in the warranty order issued by the Department.

(4) Each license holder must maintain both a current physical location address and a current mailing address with the Department. Service of notice of hearing or other notice sent by certified mail will be sent to the license holder's current mailing address according to the Department's records. If the Department sends a notice to the manufacturer, retailer, or installer at the mailing address by certified mail, and the notice is refused or unclaimed, the Department may presume that the license holder was provided proper notice. All written amended reports and orders will be serviced in this manner.

(5) If service or repairs cannot be made within the specified time frame, the license holder shall notify the Department in writing prior to the expiration of the specified time frame by certified mail. The notice shall list those items which have been, or will be, completed within the time frame and shall show good cause why the remainder of

the service or repairs cannot be made within the specified time frame. The license holder shall request an extension for a specific time. If the Department fails to respond in writing to the request within five (5) business days of the date of receipt of the notice of request for extension, the extension has been granted.

(6) Once the Department receives the service or work orders with the consumer's signature indicating that all items have been satisfactorily completed, the Department shall send a written notice to the consumer, stating that if the Department does not receive a written reply within the thirty (30) calendar days the complaint file will be closed.

(7) If the Department decides that another inspection is necessary because of conflicts among the parties to a complaint regarding the nature or quality of the corrective work, whomever the Department deems to be responsible for errors requiring the additional inspection will be required to pay the inspection fee to the Department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 31, 2005.

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Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2206

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SUBCHAPTER F. CONSUMER NOTICE REQUIREMENTS

10 TAC §§80.180, 80.181, 80.183

The new and amended rules are adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adopted rules.

§80.181. Sale of a Home from a Location other than a Principal, Licensed, Retail Location.

In order to comply with the provisions of §1201.107 of the Standards Act, a retailer or broker must:

(1) have a current, in effect surety bond issued in the most recent form promulgated by the Department; and

(2) the applicable sales agreement must identify the surety bond that applies to the transaction and contain the following statement: "The above-described surety bond applies to this transaction in the following manner: The bond is issued to the Texas Manufactured Homeowners' Recovery Trust Fund (the "Fund"), a fund described in the Texas Manufactured Housing Standards Act (Tex. Occ. Code, Chapter 1201) and administered by the Director of the Texas Department of Housing and Community Affairs, Manufactured Housing Division, as trustee of the Fund. If the Fund makes a payment to a consumer, the Fund will seek to recover under the surety bond. The obligation of the Fund to compensate a consumer for damages subject to reimbursement by the Fund is independent of the Fund's right or ability to recover from the above-described surety bond, but recoveries on surety bonds are an important part of the Fund's ability to maintain sufficient assets to compensate consumers. There can be no assurance that the Fund will have sufficient assets to compensate a consumer for a covered claim. Assuming it has sufficient assets to compensate a consumer for a covered claim, the liability of the Fund is limited to actual damages, not to exceed $35,000, and attorneys' fees, not to exceed 20% of the actual damages."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
Executive Director, Manufactured Housing Division of TDHCA
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For further information, please call: (512) 475-2206

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SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

10 TAC §80.201, §80.205

The amended rules are adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adopted rules.

§80.201. Issuance of Statements of Ownership and Location.

(a) Application Requirements. In order to be deemed complete, an application for a Statement of Ownership and Location must include, as applicable:

(1) A completed and fully executed Application for Statement of Ownership and Location on the Department's prescribed form;

(2) The required fee;

(3) To record a lien, other than a tax lien for which the Department does not have the owner's consent, copies of documentation establishing the creation and existence of each such lien;

(4) When one or more existing liens are to be released, assigned, or foreclosed, appropriate supporting documentation;

(5) When an application for Statement of Ownership and Location indicates a change in ownership but no change in lien, supporting documentation that clearly establishes that the lienholder consented to that change;

(6) When a manufactured home is to be designated for use as a dwelling after the home has been designated for business use, salvage, or as real property, evidence of a satisfactory habitability inspection by the Department.

(b) Right of Survivorship: If the survivorship election is taken, then the Department will issue a new Statement of Ownership and Location to the surviving person(s) upon receipt of a copy of the death certificate of the deceased person(s), and a properly executed application for Statement of Ownership and Location, and the applicable fee.

(c) Corrections to Statements of Ownership and Location.

(1) If a correction is required as a result of a Department error, it will be corrected at no charge.

(2) If a correction is requested because of an error made by a party other than the Department, the correction will not be made until the Department receives the following:

(A) A complete corrected application for Statement of Ownership and Location,

(B) Any necessary supporting documentation, and

(C) The required fee, which can be reduced or waived by the director for good cause.

(d) Upon issuance of a Statement of Ownership and Location, the Department will mail one certified copy to the owner and one certified copy to the lienholder. If additional certified copies are desired, an application for a certified copy must be submitted and accompanied by the additional fee.

(e) Exchanging a Document of Title for a Statement of Ownership and Location.

(1) Upon receipt of the original title and completed application for Statement of Ownership and Location (except for the fee, which is not required to replace a certificate of title with a Statement of Ownership and Location if there are no other changes), including the physical location of the home, the Department will issue a Statement of Ownership and Location.

(2) If a manufactured home title showed that it was personal property, that will be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued. Likewise, if a manufactured home has had a certificate of attachment issued and had title cancelled to real property, that shall be presumed to be its status until and unless a revised Statement of Ownership and Location is applied for and issued.

(f) Updating of Statements of Ownership and Location on Manufactured Homes Transferred as Real Property.

(1) When a manufactured home has become real property because the owner elected real property status and their Statement of Ownership and Location was recorded in the appropriate county records, the home may be sold or transferred as real property by the customary means used for real property transactions. As long as the home remains real property at the same location, ownership of the home is confirmed in the same manner as any other real property, rather than by verifying Department records. A new Statement of Ownership and Location does not have to be applied for until and unless:

(A) the manufactured home is moved to a new location;

(B) the current owner of the manufactured home wishes to convert it to personal property status; or

(C) the manufactured home no longer meets the requirements to be classified as real property (such as the home being on property subject to a long term lease which is not assignable to the buyer or transferee).

(2) To convert a manufactured home from real property to personal property, the owner of the home must submit a completed Application for Statement of Ownership and Location to the Department with supporting documentation as follows:

(A) If the applicant is not the owner of record with the Department, satisfactory proof of ownership under a complete chain of title. Acceptable evidence would include, but not be limited to, authenticated copies of all intervening transfer documents, a court order confirming ownership, or title insurance policy in such owner's name issued by a title insurance company licensed to do business in Texas.

(B) Satisfactory evidence that any liens on the manufactured home have been discharged or that all lienholders have consented to the change.

(C) Evidence of either a satisfactory habitability inspection by the Department or an election to convert the status of the home to business use or salvage.

(3) Upon receipt of the certified copy of the new Statement of Ownership and Location that reflects the real property election of the home, the certified copy shall be filed in the county real property records, at which time the real property election will take effect. A copy stamped "filed" by the county must be submitted to the Department as evidence that the requirements of §1201.2055 of the Standards Act have been satisfied and the real property election to be perfected within sixty (60) days from issuance of the Statement of Ownership and Location.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
Executive Director, Manufactured Housing Division of TDHCA
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For further information, please call: (512) 475-2206

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SUBCHAPTER H. TABLES AND FIGURES

10 TAC §80.240

The new rule is adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adopted rule.

§80.240. Tables and Figures.

(a) Tables.

(1) Maximum Spacing for Diagonal Ties.
Figure: 10 TAC §80.240(a)(1)

(2) Minimum Number of Diagonal Ties.
Figure: 10 TAC §80.240(a)(2)

(3) Maximum Spacing for Diagonal Ties (Wind Zone II) per side of the Assembled Unit.
Figure: 10 TAC §80.240(a)(3)

(4) Bracket Installation - Maximum Centerline Wall Opening for Column Uplift Brackets.
Figure: 10 TAC §80.240(a)(4)

(5) Floor Connections - Wind Zone I and II.
Figure: 10 TAC §80.240(a)(5)

(6) Roof Connection - Fastener Type and Spacing.
Figure: 10 TAC §80.240(a)(6)

(7) Main Panel Box Feeder Conductor Sizes.
Figure: 10 TAC §80.240(a)(7)

(8) Footer Capacities.
Figure: 10 TAC §80.240(a)(8)

(9) Pier Loads without Perimeter Supports.
Figure: 10 TAC §80.240(a)(9)

(10) Pier Loads with Perimeter Supports.
Figure: 10 TAC §80.240(a)(10)

(11) Mating Line Column Loads.
Figure: 10 TAC §80.240(a)(11)

(12) Enforcement Matrix.
Figure: 10 TAC §80.240(a)(12)

(b) Figures.

(1) Counties Located in Wind Zone II.
Figure: 10 TAC §80.240(b)(1)

(2) Anchor Installation.
Figure: 10 TAC §80.240(b)(2)

(3) Placement of Stabilizing Devices.
Figure: 10 TAC §80.240(b)(3)

(4) Wind Zone I Installation (Single & Multi-Section).
Figure: 10 TAC §80.240(b)(4)

(5) Diagonal Strap Placement for Piers Exceeding 36 in. in Height.
Figure: 10 TAC §80.240(b)(5)

(6) Diagonal and Vertical Ties.
Figure: 10 TAC §80.240(b)(6)

(7) Typical Installation Details.
Figure: 10 TAC §80.240(b)(7)

(8) Anchor Span.
Figure: 10 TAC §80.240(b)(8)

(9) Typical Longitudinal Stabilizing Device.
Figure: 10 TAC §80.240(b)(9)

(10) Longitudinal Ties.
Figure: 10 TAC §80.240(b)(10)

(11) Mating Line Surfaces.
Figure: 10 TAC §80.240(b)(11)

(12) Floor Connections.
Figure: 10 TAC §80.240(b)(12)

(13) Endwall Connections.
Figure: 10 TAC §80.240(b)(13)

(14) Roof Connection.
Figure: 10 TAC §80.240(b)(14)

(15) Exterior Roof Close Up.
Figure: 10 TAC §80.240(b)(15)

(16) HVAC (Heat/Cooling) Duct Crossover.
Figure: 10 TAC §80.240(b)(16)

(17) Multi-Section Water Crossover Connections.
Figure: 10 TAC §80.240(b)(17)

(18) Drain, Waste and Vent Floor Piping System.
Figure: 10 TAC §80.240(b)(18)

(19) Chassis Bonding.
Figure: 10 TAC §80.240(b)(19)

(20) Electrical Crossover.
Figure: 10 TAC §80.240(b)(20)

(21) Fuel Gas Pipe Crossover Connections.
Figure: 10 TAC §80.240(b)(21)

(22) Footer Configurations.
Figure: 10 TAC §80.240(b)(22)

(23) Pier Design (Single and Multi-Section Stack).
Figure: 10 TAC §80.240(b)(23)

(24) Perimeter Pier Front & Side View.
Figure: 10 TAC §80.240(b)(24)

(25) Typical Multi-Section Pier Layout.
Figure: 10 TAC §80.240(b)(25)

(26) Typical Single Section Pier Layout.
Figure: 10 TAC §80.240(b)(26)

(27) Determining Column Load and Marriage Line Elevation.
Figure: 10 TAC §80.240(b)(27)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
Executive Director, Manufactured Housing Division of TDHCA
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2206

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SUBCHAPTER I. FORMS

10 TAC §80.260

The new rule is adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured

Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adopted rule.

§80.260. Required and Optional Forms.

(a) Required Forms.

(1) Site Preparation Notice.
Figure: 10 TAC §80.260(a)(1)

(2) Consumer Disclosure Statement.
Figure: 10 TAC §80.260(a)(2)

(3) Consumer Protection Disclosure - Chattel Mortgage Transactions.
Figure: 10 TAC §80.260(a)(3)

(4) Notice of Installation (Form T).
Figure: 10 TAC §80.260(a)(4)

(5) Estimate for Reassigned Warranty Work.
Figure: 10 TAC §80.260(a)(5)

(6) Application for Statement of Ownership and Location.
Figure: 10 TAC §80.260(a)(6)

(7) Release or Foreclosure of Lien (Form B).
Figure: 10 TAC §80.260(a)(7)

(8) Quick Processing Form.
Figure: 10 TAC §80.260(a)(8)

(9) Form M.
Figure: 10 TAC §80.260(a)(9)

(10) Affidavit of Fact for Right of Survivorship.
Figure: 10 TAC §80.260(a)(10)

(11) Retailer/Broker Disclosure Statement.
Figure: 10 TAC §80.260(a)(11)

(12) Warranty of Habitability.
Figure: 10 TAC §80.260(a)(12)

(13) Manufacturer's Certificate of Origin.
Figure: 10 TAC §80.260(a)(13)

(b) Optional Forms. Spanish Version of Consumer Disclosure Statement.
Figure: 10 TAC §80.260(b)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
Executive Director, Manufactured Housing Division of TDHCA
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2206

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CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (Department) adopts the repeal of §§80.50 - 80.52, 80.63, 80.123, 80.124, 80.129, 80.134, 80.136, 80.137, 80.181, 80.182, 80.200, 80.202 - 80.204, 80.206, 80.207, and 80.209 without changes to the proposal as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4589). The repeals are necessary to remove unnecessary text, move text to more appropriate sections, or to propose a new rule to replace the repeal.

The effective date of repeal is thirty (30) days following the date of publication with the *Texas Register* of notice that the rules have been repealed.

The following is a restatement of the rules' factual basis:

Section 80.50 - The rule is not necessary since the Wind Zone regulations are stated in the Standards Act.

Section 80.51 - Relocated to various sections in proposed revisions to §§80.53 and 80.54.

Section 80.52 - Clarifications are made in proposed revisions in §80.54 and the definition of Permanent Foundation that make this rule unnecessary. Also, the certification form is eliminated since it is not required that a home be on a permanent foundation to be treated as real property.

Section 80.63 - All matters are now appropriately addressed in §§80.54 and 80.62.

Section 80.123 - Repealing License Requirements rule to reorganize and propose as a new rule.

Section 80.124 - The rule is not necessary.

Section 80.129 - Proposing a new §80.129 and moving the previous text to §80.127 (Sanctions and Penalties) and the Enforcement Matrix to new Subchapter H (Tables and Figures).

Figure: 10 TAC §80.129(g) - Moved Enforcement Matrix to new §80.240(a)(12).

Section 80.134 - Relocated portions of the text to §80.121 (Retailer's Responsibilities) and deleted text that is no longer necessary.

Section 80.136 - Supporting documentation relating to a permanent foundation is no longer required and the closing requirements are clearly set forth in the statute.

Section 80.137 - Relocated subsection (b) and forms to new Subchapter I (Forms).

Figure: 10 TAC §80.137(a)(1) - Moved Notice of Installation (Form T) to new §80.260(a)(4).

Figure: 10 TAC §80.137(a)(2) - The Down Payment Verification Affidavit is deleted.

Figure: 10 TAC §80.137(a)(3) - Moved Estimate for Reassigned Warranty Work form to new §80.260(a)(5).

Section 80.181 - Proposing a new 80.181 rule and relocating necessary text in the repealed rule to §80.121(e) and forms to new Subchapter I (Forms).

Figure: 10 TAC §80.181(1) - Moved the Consumer Disclosure Statement form to new §80.260(a)(2).

Figure: 10 TAC §80.181(2) - Moved the Spanish version of the Consumer Disclosure Statement form to new §80.260(b).

Section 80.182 - Relocated necessary text to §80.121(f) and forms to new Subchapter I (Forms).

Figure: 10 TAC §80.182(a)(1) - Moved the 163 Disclosure form to new §80.260(a)(3).

Figure: 10 TAC §80.182(a)(2) - Deleting the Spanish version of the 163 Disclosure form.

Section 80.200 - Deleted subsection (a) and relocated (b) to §80.121(a)(1)(L) (Retailer's Responsibilities).

Section 80.202 - Relocated fees to §80.20(j).

Section 80.203 - Relocated to §80.120 (Manufacturer's Responsibilities).

Section 80.204 - The Notice of Installation (Form T) is no longer filed with the Application for Statement of Ownership and Location.

Section 80.206 - The rule is no longer necessary.

Section 80.207 - The habitability inspection requirement for changes from real to personal property moved to §80.201 and habitability inspection requirements for converting business use and salvage homes to residential use are already set forth in §80.201.

Section 80.209 - Relocated forms to new Subchapter I (Forms).

Figure: 10 TAC §80.209(a) - Moved the Application for Statement of Ownership and Location form to new §80.260(a)(6).

Figure: 10 TAC §80.209(b) - Moved the Release or Foreclosure of Lien form to new §80.260(a)(7).

No comments were received for or against the proposal to repeal.

SUBCHAPTER D. STANDARDS AND REQUIREMENTS

10 TAC §§80.50 - 80.52, 80.63

The repeal is adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the repealed rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-2206

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SUBCHAPTER E. GENERAL REQUIREMENTS

10 TAC §§80.123, 80.124, 80.129, 80.134, 80.136, 80.137

The repeal is adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the repealed rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
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For further information, please call: (512) 475-2206

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SUBCHAPTER F. CONSUMER NOTICE REQUIREMENTS

10 TAC §80.181, §80.182

The repeal is adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the repealed rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

10 TAC §§80.200, 80.202 - 80.204, 80.206, 80.207, 80.209

The repeal is adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Subtitle C, Chapter 1201, §1201.052, which provides the Department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306.603, which authorizes the director to adopt rules as necessary to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the repealed rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy K. Irvine
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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

16 TAC §33.21

The Texas Alcoholic Beverage Commission adopts amendments to §33.21 with changes to the text as originally published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5465). This action adds subsection (b) to the previously existing rule and establishes the amount and other requirements for performance bonds mandated by §11.61(b-1) and §61.71(k) of the Alcoholic Beverage Code.

The above referenced statutes were added to the Alcoholic Beverage Code by the 79th Texas Legislature and became effective September 1, 2005. Those statutes mandate that persons located in counties of more than 1.4 million population and holding a license or permit under Chapter 25 or 69 of the Alcoholic Beverage Code must post a "surety bond in an amount to be determined by the commission, conditioned on the licensee's or permittee's conformance with the alcoholic beverage law." On revocation of this bond, the licensee/permittee must post a second bond in a higher amount. On revocation of the second bond, the licensee/permittee must post a third bond in a higher amount. On revocation of the third bond, the license or permit must be cancelled.

This amendment was adopted to effectuate this statutory scheme. The amounts of the respective bonds required by this rule were set at a level so as to act as an effective deterrent to violation of the Alcoholic Beverage Code.

The commission received one comment from the Surety Association of South Texas. This comment was neither in favor of nor opposed to the rule, but rather was in the form of seven questions related to the operation and effect of the proposed amendment. In response to one of these questions, the commission determined that bonds governed by this rule should, in some respects, be governed by the same rules governing conduct surety bonds as articulated in §33.24. Accordingly, the commission added paragraph (b)(3) to the text of the rule.

This amendment is adopted under the authority of §5.31 of the Alcoholic Beverage Code, which authorizes the commission to prescribe and publish such rules as are necessary to carry out the provisions of the code.

Cross Reference: Sections 11.61(b-1) and 61.71(k) of the Alcoholic Beverage Code are affected by this amendment.

§33.21. Amount of Bond Required.

(a) No permit shall be issued to any person until all bonds required by the Alcoholic Beverage Code or by rule of the commission as a prerequisite to issuance of such permit have been filed with and accepted by the administrator. Bonds shall be in the following amounts: Figure: 16 TAC §33.21(a)

(b) Performance Bonds

(1) This section relates to §§11.61(b-1) and 61.71(j) of the Alcoholic Beverage Code.

(2) The first bond filed by a licensee or permittee with the commission as prescribed under §§11.61(b-1) and 61.71(j) of the Alcoholic Beverage Code shall be in the amount of $2,000. In the event the first bond is forfeited to the commission, a licensee or permittee must file a second bond with the commission as prescribed under those provisions in the amount of $4,000 before a license or permit may be reinstated. In the event the second bond is forfeited to the commission, a licensee or permittee must file a third bond issued under those provisions in the amount of $6,000 before a license or permit may be reinstated.

(3) The provisions of rule 33.24(a), (b), (d), (e), (f), (h), and (k) apply to performance bonds.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Alan Steen
Administrator
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3204

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CHAPTER 37. LEGAL
SUBCHAPTER A. RULES OF PRACTICE

16 TAC §37.4

The Texas Alcoholic Beverage Commission adopts new §37.4 without changes to the text as originally published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5465). The rule defines the notice of hearing referred to in §§11.61(i), 11.63, and 61.71(k) of the Alcoholic Beverage Code.

The above referenced statutes were added to the Alcoholic Beverage Code by the 79th Texas Legislature and became effective September 1, 2005. These statutes require that for certain retailers located in counties with more than 1.4 million population, hearings on charged violations must be concluded not later than the 60th day after "notice" of the violation is provided. This rule is adopted to give definite meaning to the statutory term "notice" by incorporating the settled meanings of the Administrative Procedures Act.

No comments were received regarding this rule.

This new rule is proposed under the authority of §5.31 of the Alcoholic Beverage Code, which authorizes the commission to prescribe and publish such rules as are necessary to carry out the provisions of the code.

Cross Reference: Sections 11.61(i), 11.63, and 61.71(k) of the Alcoholic Beverage Code are affected by the rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Alan Steen
Administrator
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3204

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16 TAC §37.5

The Texas Alcoholic Beverage Commission adopts new §37.5, governing the population level of certain counties within the state. The rule is adopted without changes to the text as originally published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5466).

The 79th Texas Legislature added §§11.13(a), 11.321(a), 11.61(b-1), 25.02(b), 61.52, 61.71(j), 61.71(k), and 69.02(b) to the Alcoholic Beverage Code. These statutes impose certain conditions on certain retailers in counties containing more than 1.4 million population. In order to insure definite, stable, and predictable application of these statutes, it is necessary to establish some reliable method of determining population levels. The commission determined that the most effective way to do this is by reference to the federal census as is done for other purposes in Chapter 105 of the Alcoholic Beverage Code.

No comments were received regarding the rule.

This new rule is adopted under the authority of §5.31 of the Alcoholic Beverage Code, which authorizes the commission to prescribe and publish such rules as are necessary to carry out the provisions of the code.

Cross Reference: Sections 11.13(a), 11.321(a), 11.61(b-1), 25.02(b), 61.52, 61.71(j), 61.71(k), and 69.02(b) of the Alcoholic Beverage Code are affected by the rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 206-3204

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CHAPTER 41. AUDITING
SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.56

The Texas Alcoholic Beverage Commission adopts new §41.56 without changes to the text as originally published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5466).

The 79th Texas Legislature created a new Chapter 54 of the Alcoholic Beverage Code, establishing a new permit by which out-of-state wineries may sell and ship product to Texas consumers. In order to accomplish its statutory mission of inspecting and supervising every aspect of the alcoholic beverage industry, to protect against diversion of alcoholic beverages into illicit channels, and to insure accurate tax assessment and collection it is necessary to establish a requirement that direct shippers make regular reports of commercial activity in Texas. This rule accomplishes this purpose.

No comments were received regarding this rule.

This new rule is adopted under the authority of §5.31 of the Alcoholic Beverage Code, which authorizes the commission to prescribe and publish such rules as are necessary to carry out the provisions of the code.

Cross Reference: Chapter 54 of the Alcoholic Beverage Code is affected by the rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504916

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT
SUBCHAPTER B. DEVELOPMENT AND ADMINISTRATION OF TESTS

19 TAC §101.23

The State Board of Education (SBOE) adopts an amendment to §101.23, concerning student assessment. The amendment is adopted without changes to the proposed text as published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4424) and will not be republished. The section sets forth the SBOE-determined level of performance considered to be satisfactory on assessment instruments. The adopted amendment sets the performance standards for the Grade 8 science assessment. The Texas Education Code (TEC), §39.024(a), authorizes the SBOE to set the standard for satisfactory performance on the Texas Assessment of Knowledge and Skills (TAKS).

The 2001 federal No Child Left Behind (NCLB) Act requires that science be assessed in each of the following grade spans: Grades 3 - 5, 6 - 9, and 10 - 12 by the 2007 - 2008 school year. At the state level, Senate Bill 1108 and House Bill 411, passed by the 78th Texas Legislature in 2003, mandated the development of a Grade 8 science assessment to be administered to students no later than the 2006 - 2007 school year. Grade 8 science is scheduled to be included in the state accountability system in the 2007-2008 school year. Currently TAKS measures the statewide curriculum in science at Grades 5, 10, and 11. At this time, NCLB does not require that science performance results be included in the calculation of Adequate Yearly Progress (AYP). Development activities have been conducted for the new assessment, and the Grade 8 science assessment was field-tested both in a paper-and-pencil format and in an online format in April 2005.

When the TAKS program was first developed, a national Technical Advisory Committee (TAC) was assembled to advise the SBOE on standard-setting activities. This committee was composed of prominent educational testing experts with experience in standard setting in other major testing programs across the country. The current TAC met in February 2005 to discuss standard setting for the Grade 8 science assessment. At this meeting the TAC discussed the plan for conducting standard setting, a summary of the methods for standard setting, impact data, and ways to examine recommended standards in comparison with standards in other Grade 8 subjects and other grade level science assessments. At the April 2005 SBOE meeting, the SBOE approved the proposed standard-setting plan for the TAKS Grade 8 science assessment.

The TAKS Grade 8 science assessment standard-setting panel met on June 29 - 30, 2005, and the SBOE received a summary of that meeting. The same standard-setting process was used for the Grade 8 science assessment as was used for the other TAKS assessments. Panelists used the item-mapping procedure, which is a common method that many states use. Panelists in an item-mapping procedure focus on what students should be able to do and know in each performance category (e.g., Did Not Meet the Standard, Met the Standard, Commended Performance).

Panelists were given descriptions of the three performance categories. The panel then discussed these definitions and described the types of skills and levels of proficiencies for Grade 8 science that students meeting those definitions should possess. The facilitators took panelists through the item-mapping method and gave them a chance to practice before applying the method to the Grade 8 science test. Once they were comfortable with the process, panelists were given the test booklet, and the panelists went through three rounds of judgment. In the first round, panelists reviewed the test items ordered from easiest to hardest, discussed the content of test items relative to the Texas Essential Knowledge and Skills (TEKS), and made independent decisions about the two performance standards.

For the second round, item difficulty values from the 2005 field test were provided. In the third round, panelists received impact data based on the 2005 field-test data for all students in ethnic and gender subgroups. Panelists were cautioned that field-test data may be unmotivated. After group discussions focusing on the reasons for their decisions and their review of the impact data, panelists completed the third round of decision making, the reasonableness check. They compared the impact data for the Grade 8 science test with the impact data for the science assessments in Grades 5, 10, and 11. For anything that seemed out of line, the panel then looked at the test items and data to determine whether that standard was unreasonable and adjusted the cut score accordingly. The SBOE was also provided the projected impact of the standards, including numbers and percentages of students estimated to meet those standards.

Panelists then had the opportunity to discuss whether to recommend that standards be phased in from the 2 standard error of measurement (SEM) standard, like the standards for the other assessments, or implemented at the panel-recommended level immediately. They discussed the reasons for phasing in the standards for the other TAKS assessments: TAKS was a new assessment program, the assessment was known to be a more rigorous assessment than the Texas Assessment of Academic Skills (TAAS) program, and the assessments were considered to be high-stakes due to the Student Success Initiative and accountability. Panelists voted overwhelmingly in favor of recommending that standards not be phased in due to the fact that the TAKS assessment was no longer new, students had experienced the Grade 5 science assessment, and the Grade 8 science assessment is not yet considered a high-stakes assessment.

At the July 2005 meeting, the SBOE took action that would establish a two-year phase-in period for the "met standard" level using the SEM statistic to determine the standards during the phase in period. For spring 2006, the passing standard would be set at 2 SEM below the panel recommendation, moving up to 1 SEM below the next year, and then to the panel recommendation in spring 2008.

In August 2005, a follow-up poll of the panelists involved in the standard setting was conducted to provide panelists an additional opportunity to voice their opinion about whether to phase in the standards for the Grade 8 science assessment. Of the 22

panelists, 15 recommended phasing in the performance standards and seven were against phasing in the standards.

At the October 18, 2005, meeting, the SBOE took action to adopt the amendment as proposed. The adopted amendment to §101.23 adds a new subsection (b), including a new figure, identifying the performance standards established by the SBOE for the TAKS Grade 8 science assessment. This figure reflects the TAKS scale scores required to achieve the "met standard" and "commended performance" at the standards equivalent to the panel recommendations, as well as those scale score standards at 1 SEM (beginning spring 2007) and 2 SEM (beginning spring 2006) below the panel recommendations for the "met standard" level. Language is also included in the adopted new subsection (b) and figure to maintain the equivalent standards in future test forms.

In accordance with Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than September 1, 2006, in order to implement the adopted performance standards for the spring 2006 administration of the TAKS Grade 8 science assessment. The effective date of the adopted amendment is 20 days after filing as adopted.

The following comment was received regarding adoption of the amendment.

Comment. The officers and board of the Texas Statewide Network of Assessment Professionals (TSNAP) commented in favor of phasing in the "met standard" level for the Grade 8 science assessment over three school years as proposed by the SBOE. The TSNAP cited a number of reasons for supporting the proposal, including success of previous phase in, adequate time and resources, progression toward inclusion in accountability process, implementation of facilities and lab materials, and relationship to the textbook adoption cycle.

Agency response. The SBOE agreed with phasing in the Grade 8 science assessment "met standard" level and took action to adopt the amendment accordingly.

The amendment is adopted under the Texas Education Code, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program, and, specifically, §39.024(a), which authorizes the State Board of Education to set the standard for satisfactory performance on the TAKS.

The amendment implements the TEC, Chapter 39, Subchapter B.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 27, 2005.

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Proposal publication date: August 5, 2005
For further information, please call: (512) 475-1497

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CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS

SUBCHAPTER A. ELEMENTARY

19 TAC §§111.11 - 111.17

The State Board of Education (SBOE) adopts amendments to §§111.11 - 111.17, concerning the Texas Essential Knowledge and Skills (TEKS) for mathematics. The amendments to §§111.11 - 111.15 are adopted without changes to the proposed text as published in the August 5, 2005, issue of the *Texas Register* (30 TexReg 4425) and will not be republished. The amendments to §111.16 and §111.17 are adopted with changes to the proposed text published on August 5, 2005. The sections establish the curriculum standards for elementary mathematics, Kindergarten-Grade 5. The adopted amendments refine and align elementary mathematics Texas Essential Knowledge and Skills (TEKS), for implementation beginning with the 2006-2007 school year.

Following a November 2003 directive from the SBOE to provide a schedule for reviewing the TEKS, Texas Education Agency (TEA) staff prepared a proposed 2004-2005 TEKS review calendar. The TEKS review process was designed to follow the same timeline as the textbook adoption process.

TEA staff began the review process for the elementary mathematics TEKS. A work group of teachers, central office staff, and university personnel was assembled to review these TEKS. After the work group refined and aligned the elementary mathematics TEKS, the draft revisions were placed on the TEA web site in the form of a survey to collect feedback from the public for 30 days beginning in mid-December 2004. A summary of the survey results was provided to the SBOE at the April meeting.

The draft revisions were provided to a review panel consisting of highly regarded mathematics experts. Feedback from mathematics experts and from SBOE members at the April meeting were incorporated into the amendments to the elementary mathematics TEKS. Reviewers' comments were provided to SBOE members prior to the July 2005 meeting.

Dr. James Epperson, expert panelist from the University of Texas at Arlington, was present at the July 2005 meeting to answer questions from SBOE members. One additional correction was submitted to the board and approved in July with other amendments for first reading and filing authorization.

The proposed amendments include revisions for precision in language, mathematical correctness, developmental appropriateness, vertical alignment, and parallel language from Grades K-5.

In response to public comments, two additional refinements are included since approved for first reading and filed as proposed. The additional refinements in §111.16(b) and §111.17(b) will make language in place value student expectations for fourth and fifth grades consistent with language for third grade.

The following comment was received regarding adoption of the amendments.

Comment. Teachers who participated in Texas Assessment of Knowledge and Skills committee meetings in August 2005 commented that the current language in fourth and fifth grade student expectations for place value is confusing.

Agency response. The SBOE agreed and took action to change language in fourth and fifth grade student expectations, §111.16(b) and §111.17(b), respectively, to match the language in the third grade student expectation.

The amendments are adopted under the Texas Education Code, §7.102, which authorizes the SBOE to establish curriculum and graduation requirements and §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments.

The amendments implement the Texas Education Code, §7.102, and §28.002.

§111.16. Mathematics, Grade 4.

(a) Introduction.

(1) Within a well-balanced mathematics curriculum, the primary focal points at Grade 4 are comparing and ordering fractions and decimals, applying multiplication and division, and developing ideas related to congruence and symmetry.

(2) Throughout mathematics in Grades 3-5, students build a foundation of basic understandings in number, operation, and quantitative reasoning; patterns, relationships, and algebraic thinking; geometry and spatial reasoning; measurement; and probability and statistics. Students use algorithms for addition, subtraction, multiplication, and division as generalizations connected to concrete experiences; and they concretely develop basic concepts of fractions and decimals. Students use appropriate language and organizational structures such as tables and charts to represent and communicate relationships, make predictions, and solve problems. Students select and use formal language to describe their reasoning as they identify, compare, and classify two- or three-dimensional geometric figures; and they use numbers, standard units, and measurement tools to describe and compare objects, make estimates, and solve application problems. Students organize data, choose an appropriate method to display the data, and interpret the data to make decisions and predictions and solve problems.

(3) Throughout mathematics in Grades 3-5, students develop numerical fluency with conceptual understanding and computational accuracy. Students in Grades 3-5 use knowledge of the base-ten place value system to compose and decompose numbers in order to solve problems requiring precision, estimation, and reasonableness. By the end of Grade 5, students know basic addition, subtraction, multiplication, and division facts and are using them to work flexibly, efficiently, and accurately with numbers during addition, subtraction, multiplication, and division computation.

(4) Problem solving, language and communication, connections within and outside mathematics, and formal and informal reasoning underlie all content areas in mathematics. Throughout mathematics in Grades 3-5, students use these processes together with technology and other mathematical tools such as manipulative materials to develop conceptual understanding and solve meaningful problems as they do mathematics.

(b) Knowledge and skills.

(1) Number, operation, and quantitative reasoning. The student uses place value to represent whole numbers and decimals. The student is expected to:

(A) use place value to read, write, compare, and order whole numbers through 999,999,999; and

(B) use place value to read, write, compare, and order decimals involving tenths and hundredths, including money, using concrete objects and pictorial models.

(2) Number, operation, and quantitative reasoning. The student describes and compares fractional parts of whole objects or sets of objects. The student is expected to:

(A) use concrete objects and pictorial models to generate equivalent fractions;

(B) model fraction quantities greater than one using concrete objects and pictorial models;

(C) compare and order fractions using concrete objects and pictorial models; and

(D) relate decimals to fractions that name tenths and hundredths using concrete objects and pictorial models.

(3) Number, operation, and quantitative reasoning. The student adds and subtracts to solve meaningful problems involving whole numbers and decimals. The student is expected to:

(A) use addition and subtraction to solve problems involving whole numbers; and

(B) add and subtract decimals to the hundredths place using concrete objects and pictorial models.

(4) Number, operation, and quantitative reasoning. The student multiplies and divides to solve meaningful problems involving whole numbers. The student is expected to:

(A) model factors and products using arrays and area models;

(B) represent multiplication and division situations in picture, word, and number form;

(C) recall and apply multiplication facts through 12 x 12;

(D) use multiplication to solve problems (no more than two digits times two digits without technology); and

(E) use division to solve problems (no more than one-digit divisors and three-digit dividends without technology).

(5) Number, operation, and quantitative reasoning. The student estimates to determine reasonable results. The student is expected to:

(A) round whole numbers to the nearest ten, hundred, or thousand to approximate reasonable results in problem situations; and

(B) use strategies including rounding and compatible numbers to estimate solutions to multiplication and division problems.

(6) Patterns, relationships, and algebraic thinking. The student uses patterns in multiplication and division. The student is expected to:

(A) use patterns and relationships to develop strategies to remember basic multiplication and division facts (such as the patterns in related multiplication and division number sentences (fact families) such as 9 x 9 = 81 and 81 ÷ 9 = 9); and

(B) use patterns to multiply by 10 and 100.

(7) Patterns, relationships, and algebraic thinking. The student uses organizational structures to analyze and describe patterns and relationships. The student is expected to describe the relationship between two sets of related data such as ordered pairs in a table.

(8) Geometry and spatial reasoning. The student identifies and describes attributes of geometric figures using formal geometric language. The student is expected to:

(A) identify and describe right, acute, and obtuse angles;

(B) identify and describe parallel and intersecting (including perpendicular) lines using concrete objects and pictorial models; and

(C) use essential attributes to define two- and three-dimensional geometric figures.

(9) Geometry and spatial reasoning. The student connects transformations to congruence and symmetry. The student is expected to:

(A) demonstrate translations, reflections, and rotations using concrete models;

(B) use translations, reflections, and rotations to verify that two shapes are congruent; and

(C) use reflections to verify that a shape has symmetry.

(10) Geometry and spatial reasoning. The student recognizes the connection between numbers and their properties and points on a line. The student is expected to locate and name points on a number line using whole numbers, fractions such as halves and fourths, and decimals such as tenths.

(11) Measurement. The student applies measurement concepts. The student is expected to estimate and measure to solve problems involving length (including perimeter) and area. The student uses measurement tools to measure capacity/volume and weight/mass. The student is expected to:

(A) estimate and use measurement tools to determine length (including perimeter), area, capacity and weight/mass using standard units SI (metric) and customary;

(B) perform simple conversions between different units of length, between different units of capacity, and between different units of weight within the customary measurement system;

(C) use concrete models of standard cubic units to measure volume;

(D) estimate volume in cubic units; and

(E) explain the difference between weight and mass.

(12) Measurement. The student applies measurement concepts. The student measures time and temperature (in degrees Fahrenheit and Celsius). The student is expected to:

(A) use a thermometer to measure temperature and changes in temperature; and

(B) use tools such as a clock with gears or a stopwatch to solve problems involving elapsed time.

(13) Probability and statistics. The student solves problems by collecting, organizing, displaying, and interpreting sets of data. The student is expected to:

(A) use concrete objects or pictures to make generalizations about determining all possible combinations of a given set of data or of objects in a problem situation; and

(B) interpret bar graphs.

(14) Underlying processes and mathematical tools. The student applies Grade 4 mathematics to solve problems connected to everyday experiences and activities in and outside of school. The student is expected to:

(A) identify the mathematics in everyday situations;

(B) solve problems that incorporate understanding the problem, making a plan, carrying out the plan, and evaluating the solution for reasonableness;

(C) select or develop an appropriate problem-solving plan or strategy, including drawing a picture, looking for a pattern, systematic guessing and checking, acting it out, making a table, working a simpler problem, or working backwards to solve a problem; and

(D) use tools such as real objects, manipulatives, and technology to solve problems.

(15) Underlying processes and mathematical tools. The student communicates about Grade 4 mathematics using informal language. The student is expected to:

(A) explain and record observations using objects, words, pictures, numbers, and technology; and

(B) relate informal language to mathematical language and symbols.

(16) Underlying processes and mathematical tools. The student uses logical reasoning. The student is expected to:

(A) make generalizations from patterns or sets of examples and nonexamples; and

(B) justify why an answer is reasonable and explain the solution process.

§111.17. Mathematics, Grade 5.

(a) Introduction.

(1) Within a well-balanced mathematics curriculum, the primary focal points at Grade 5 are comparing and contrasting lengths, areas, and volumes of two- or three-dimensional geometric figures; representing and interpreting data in graphs, charts, and tables; and applying whole number operations in a variety of contexts.

(2) Throughout mathematics in Grades 3-5, students build a foundation of basic understandings in number, operation, and quantitative reasoning; patterns, relationships, and algebraic thinking; geometry and spatial reasoning; measurement; and probability and statistics. Students use algorithms for addition, subtraction, multiplication, and division as generalizations connected to concrete experiences; and they concretely develop basic concepts of fractions and decimals. Students use appropriate language and organizational structures such as tables and charts to represent and communicate relationships, make predictions, and solve problems. Students select and use formal language to describe their reasoning as they identify, compare, and classify two- or three-dimensional geometric figures; and they use numbers, standard units, and measurement tools to describe and compare objects, make estimates, and solve application problems. Students organize data, choose an appropriate method to display the data, and interpret the data to make decisions and predictions and solve problems.

(3) Throughout mathematics in Grades 3-5, students develop numerical fluency with conceptual understanding and computational accuracy. Students in Grades 3-5 use knowledge of the base-ten place value system to compose and decompose numbers in order to solve problems requiring precision, estimation, and reasonableness. By the end of Grade 5, students know basic addition, subtraction, multiplication, and division facts and are using them to work flexibly, efficiently, and accurately with numbers during addition, subtraction, multiplication, and division computation.

(4) Problem solving, language and communication, connections within and outside mathematics, and formal and informal reasoning underlie all content areas in mathematics. Throughout mathematics in Grades 3-5, students use these processes together with technology and other mathematical tools such as manipulative materials to develop conceptual understanding and solve meaningful problems as they do mathematics.

(b) Knowledge and skills.

(1) Number, operation, and quantitative reasoning. The student uses place value to represent whole numbers and decimals. The student is expected to:

(A) use place value to read, write, compare, and order whole numbers through the 999,999,999,999; and

(B) use place value to read, write, compare, and order decimals through the thousandths place.

(2) Number, operation, and quantitative reasoning. The student uses fractions in problem- solving situations. The student is expected to:

(A) generate a fraction equivalent to a given fraction such as 1/2 and 3/6 or 4/12 and 1/3;

(B) generate a mixed number equivalent to a given improper fraction or generate an improper fraction equivalent to a given mixed number;

(C) compare two fractional quantities in problem-solving situations using a variety of methods, including common denominators; and

(D) use models to relate decimals to fractions that name tenths, hundredths, and thousandths.

(3) Number, operation, and quantitative reasoning. The student adds, subtracts, multiplies, and divides to solve meaningful problems. The student is expected to:

(A) use addition and subtraction to solve problems involving whole numbers and decimals;

(B) use multiplication to solve problems involving whole numbers (no more than three digits times two digits without technology);

(C) use division to solve problems involving whole numbers (no more than two-digit divisors and three-digit dividends without technology), including interpreting the remainder within a given context;

(D) identify common factors of a set of whole numbers; and

(E) model situations using addition and/or subtraction involving fractions with like denominators using concrete objects, pictures, words, and numbers.

(4) Number, operation, and quantitative reasoning. The student estimates to determine reasonable results. The student is expected to use strategies, including rounding and compatible numbers to estimate solutions to addition, subtraction, multiplication, and division problems.

(5) Patterns, relationships, and algebraic thinking. The student makes generalizations based on observed patterns and relationships. The student is expected to:

(A) describe the relationship between sets of data in graphic organizers such as lists, tables, charts, and diagrams; and

(B) identify prime and composite numbers using concrete objects, pictorial models, and patterns in factor pairs.

(6) Patterns, relationships, and algebraic thinking. The student describes relationships mathematically. The student is expected to select from and use diagrams and equations such as $y = 5 + 3$ to represent meaningful problem situations.

(7) Geometry and spatial reasoning. The student generates geometric definitions using critical attributes. The student is expected to identify essential attributes including parallel, perpendicular, and congruent parts of two- and three-dimensional geometric figures.

(8) Geometry and spatial reasoning. The student models transformations. The student is expected to:

(A) sketch the results of translations, rotations, and reflections on a Quadrant I coordinate grid; and

(B) identify the transformation that generates one figure from the other when given two congruent figures on a Quadrant I coordinate grid.

(9) Geometry and spatial reasoning. The student recognizes the connection between ordered pairs of numbers and locations of points on a plane. The student is expected to locate and name points on a coordinate grid using ordered pairs of whole numbers.

(10) Measurement. The student applies measurement concepts involving length (including perimeter), area, capacity/volume, and weight/mass to solve problems. The student is expected to:

(A) perform simple conversions within the same measurement system (SI (metric) or customary);

(B) connect models for perimeter, area, and volume with their respective formulas; and

(C) select and use appropriate units and formulas to measure length, perimeter, area, and volume.

(11) Measurement. The student applies measurement concepts. The student measures time and temperature (in degrees Fahrenheit and Celsius). The student is expected to:

(A) solve problems involving changes in temperature; and

(B) solve problems involving elapsed time.

(12) Probability and statistics. The student describes and predicts the results of a probability experiment. The student is expected to:

(A) use fractions to describe the results of an experiment;

(B) use experimental results to make predictions; and

(C) list all possible outcomes of a probability experiment such as tossing a coin.

(13) Probability and statistics. The student solves problems by collecting, organizing, displaying, and interpreting sets of data. The student is expected to:

(A) use tables of related number pairs to make line graphs;

(B) describe characteristics of data presented in tables and graphs including median, mode, and range; and

(C) graph a given set of data using an appropriate graphical representation such as a picture or line graph.

(14) Underlying processes and mathematical tools. The student applies Grade 5 mathematics to solve problems connected to everyday experiences and activities in and outside of school. The student is expected to:

(A) identify the mathematics in everyday situations;

(B) solve problems that incorporate understanding the problem, making a plan, carrying out the plan, and evaluating the solution for reasonableness;

(C) select or develop an appropriate problem-solving plan or strategy, including drawing a picture, looking for a pattern, systematic guessing and checking, acting it out, making a table, working a simpler problem, or working backwards to solve a problem; and

(D) use tools such as real objects, manipulatives, and technology to solve problems.

(15) Underlying processes and mathematical tools. The student communicates about Grade 5 mathematics using informal language. The student is expected to:

(A) explain and record observations using objects, words, pictures, numbers, and technology; and

(B) relate informal language to mathematical language and symbols.

(16) Underlying processes and mathematical tools. The student uses logical reasoning. The student is expected to:

(A) make generalizations from patterns or sets of examples and nonexamples; and

(B) justify why an answer is reasonable and explain the solution process.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.208, §535.209

The Texas Real Estate Commission (TREC) adopts amendments to §535.208, concerning Application for a License, and new §535.209, concerning Professional Inspector Corporations and Limited Liability Companies with changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5247). The amendments, form, and new rule are adopted to implement revisions to Texas Occupations Code Chapter 1102 enacted during the 79th Legislative Session, Regular Session, by Senate Bill 810.

Chapter 1102 was revised to required licensing and renewal of corporations and limited liability companies that engage in professional home inspecting for buyers and sellers in Texas. The revisions to §535.208 adopt by reference one new application form to be used by corporations and limited liability companies applying for a professional inspector license. New §535.209 further clarifies licensing requirements for resident and non-resident corporations and limited liability corporations that act as professional inspectors in Texas. Certain foreign corporations and limited liability companies that are licensed as professional inspectors or the equivalent in another state may apply for a Texas professional inspector license as long as the designated person is a licensed Texas professional inspector. The reasoned justification for the amendments, new rule, and new form is to provide clarity in the implementation of the statutory requirements for licensing of corporations and limited liability companies that engage in home inspections in Texas and to assist interested persons in the application process.

The adopted amendments to §535.208 differ from the proposed amendments to reflect the adoption of only one form to be used by corporation and limited liability company applicants instead of two separate forms. New §535.209 does not include subsection (f) of the proposed rule which was appended because of a typographical error. The revisions to the rules and form as adopted do not change the nature or scope so much that it could be deemed a different rule. The rule as adopted do not affect individuals other than those contemplated by the rule as proposed. The rules as adopted do not impose more onerous requirements that the proposed version and do not materially alter the issues raised in the proposed rule.

Comments were received from the Texas Real Estate Inspector Committee at a public meeting of the Committee held on August 29, 2005. The chairman of the Inspector Committee provided to staff a copy of the proposed application form with additions and deletions that were discussed at the Inspector Committee meeting. Committee members and members of the public attending the meeting recommended several changes to the forms including the reduction or elimination of the cost provisions, elimination of some of the requirements to provide documentation in response to certain questions, deletion or revision of some of the questions asked in the forms, and revision of the certification of the applicant. The recommendations were made in part to streamline the forms, to make the forms easier to read, and to make it less costly for persons to apply for the license.

The Commission has reviewed the comments made at the Committee meeting and the revised form provided to TREC staff and agrees with some of the revisions recommended at the Committee meeting. As a result, the Commission has changed the proposed forms as follows: The two separate forms, one for corporation applicants and one for limited liability company applicants, have been combined into one form. The requirement that the applicant provide a certified copy of the articles of incorporation or articles of organization was removed from the form. The question requesting the entity's Texas Identification Number was removed as the applicant is also required to provide its federal Employer Identification Number. The form was renumbered and

rearranged for readability and consistency. Many of the questions that required the applicant to provide supporting documentation for "yes" answers now require the applicant to provide only a written explanation. If necessary, the Commission reserves the right to request additional supporting documentation as necessary to determine the applicant's moral character as required by Subchapter C of Chapter 1102, Texas Occupations Code. The question requesting information about the owners of 10% or more of the applicant entity was revised to require the applicant to provide information on one owner only of the entity. The question requesting the applicant to provide the assumed name certificate filed with the Secretary of State was revised to require the applicant to provide only the business name assumed by the applicant without supporting documentation. The certification attesting to the truthfulness of the information provided in the application was changed to require signature by a corporation officer or limited liability company manager instead of certification by the designated officer, manager or employee of the applicant entity. An additional certification was included for the designated officer, manager or employee of the applicant entity to agree to act as such on behalf of the entity. Lastly, at the recommendation of Committee members, the application fee was reduced from $60 to $10, and the $100 recovery fund fee was deleted. Corporation and limited liability company applicants for a professional inspector license will therefore not be required to pay a fee to the Inspector Recovery Fund.

The amendments and new rule are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102 and Senate Bill 810, 79th Legislature, R.S.

§535.208. Application for a License.

(a) A person desiring to be licensed shall file an application using forms prescribed by the commission. Prior to filing an application for a real estate inspector license or for a professional inspector license, the applicant must pay the required fee for evaluation of the education completed by the person and must obtain a written response from the commission showing the applicant meets current education requirements for the license. The commission may require an applicant to furnish materials such as source outlines, syllabi, course descriptions or official transcripts to verify course content or credit. The commission may not accept an application for filing if the application is materially incomplete or the application is not accompanied by the appropriate fee. The commission may not issue a license unless the applicant:

(1) pays the fee prescribed by the commission;

(2) satisfies any experience or education requirements established by Texas Occupations Code, Chapter 1102 (Chapter 1102), or by these sections;

(3) successfully completes any qualifying examination required by Chapter 1102;

(4) provides all supporting documentation or information requested by the commission in connection with the application.

(b) A person who has previously satisfied applicable education requirements and obtained an evaluation from the commission also may apply for a license by accessing the commission's Internet web site, entering the required information on the application form and paying the appropriate fee in accordance with the instructions provided at the site by the commission. An applicant for an apprentice inspector license must provide the commission with the applicant's photograph and signature prior to issuance of a license certificate. An applicant for a real estate or professional inspector license must provide the commission with the applicant's signature prior to issuance of a license certificate. An applicant may provide the required item(s) prior to the submission of an electronic application.

(c) The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Inspection Log, Form REI 1-3;

(2) Application for a License as an Apprentice Inspector, Form REI 2-7;

(3) Application for a License as a Real Estate Inspector, Form REI 4-9;

(4) Application for a License as a Professional Inspector, Form REI 6-9; and

(5) Business License Application for Professional Inspector License by a Limited Liability Company or Corporation, Form REI 7-0.

(d) An application shall be considered void and subject to no further evaluation or processing when one of the following events occurs.

(1) The applicant fails to satisfy a required examination within six months from the date the application is accepted for filing.

(2) The applicant fails to provide information or documentation within 60 days after the commission makes written request for the information or documentation.

(3) The applicant fails to submit a required fee within 60 days after the commission makes written request for payment of the fee.

(e) An application for a license may be denied if the commission determines that the applicant has failed to satisfy the commission as to the applicant's honesty, trustworthiness and integrity or if the applicant has been convicted of a criminal offense which is grounds for disapproval of an application under §541.1 of this title (relating to Criminal Offense Guidelines). Notice of the denial and any hearing on the denial shall be as provided in Texas Occupations Code, §1101.364, and §533.34 of this title (relating to Disapproval of an Application for a License or Registration). For the purposes of this section, the term "late renewal" means an application for a license by a person who held the same type of license no more than two years prior to the filing of the application.

(f) Procuring or attempting to procure a license by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application is grounds to deny the application or suspend or revoke the license. It is a violation of this section for a sponsoring professional inspector knowingly to make a false statement to the commission in an application for a license or late renewal of a license for an apprentice or a real estate inspector.

§535.209. Professional Inspector Corporations and Limited Liability Companies.

(a) For the purposes of qualifying for, maintaining, or renewing a license, a corporation or limited liability company must designate

one person holding an active Texas professional inspector license to act for it. The corporation or limited liability company may not act as a professional inspector during any period in which it has not designated a person to act for it who holds an active Texas professional inspector license. A professional inspector may not act as a designated person at any time while the professional inspector's license is inactive, expired, suspended or revoked.

(b) A corporation or limited liability company formed under the laws of a state other than Texas will be considered to be a Texas resident for purposes of Chapter 1102, Texas Occupations Code if it is qualified to do business in Texas; its officers or managers, its principal place of business and all of its assets are located in Texas; and all of its officers and directors or managers and members are Texas residents.

(c) Pursuant to §1102.112, Texas Occupations Code, a limited liability company created under the laws of another state or a corporation chartered in a state other than Texas may apply for a Texas professional inspector license if the entity meets one of the following requirements.

(1) The entity is licensed as a professional inspector or equivalent by the state in which it was created or chartered.

(2) The entity is licensed as a professional inspector or equivalent in a state in which it is permitted to engage in real estate brokerage business as a foreign limited liability company or corporation.

(3) The entity was created or chartered in a state that does not license limited liability companies or corporations, as the case may be, and the entity is lawfully engaged in the practice of inspecting homes for buyers or sellers in another state and meets all other requirements for applications for a license in Texas.

(d) The word "state" refers to the states, territories, and possessions of the United States and any foreign country or governmental subdivision thereof.

(e) Foreign corporations and limited liability companies also must be permitted to engage in business in this state to receive a Texas professional inspector license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 26, 2005.

TRD-200504843
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: November 15, 2005
Proposal publication date: September 2, 2005
For further information, please call: (512) 465-3900

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER T. FAIR PLAN
DIVISION 1. PLAN OF OPERATION

28 TAC §5.9912

The Commissioner of Insurance adopts an amendment to §5.9912, concerning the Governing Committee of the Fair Access to Insurance Requirements (FAIR) Plan Association. The amended section is adopted with one change to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4308).

The amendment, which was requested by the FAIR Plan Governing Committee, is necessary to clarify that all members of the Governing Committee of the FAIR Plan Association may be reimbursed for reasonable actual expenses. The FAIR Plan Association was established by Insurance Code Article 21.49A for the purpose of delivering residential property insurance to qualified citizens of Texas who are unable to obtain it from the voluntary market in areas determined by the Commissioner of Insurance to be underserved areas. The premise of the FAIR Plan Association is that readily obtainable residential property insurance is necessary to the economic welfare and orderly growth and development of the state. The Governing Committee determines policy and provides guidance for the day-to-day operations of the FAIR Plan Association, allowing the Fair Plan Association to function efficiently. The Governing Committee, comprised of eleven members, five of whom represent insurers, two licensed agents and four public representatives, must meet in order to oversee the operations of the FAIR Plan Association. The meetings are held in different locations throughout the state to allow opportunity for participation by interested members of the public and so that no one location receives the economic benefit of hosting the meeting. Since the Governing Committee frequently meets in towns which are not the home town of the members; it is equitable that the members be reimbursed for their reasonable actual expenses to fulfill the purposes and objectives of the FAIR Plan Association. The word "solely" was added to the new subsection (o) after the word "incurred" to clarify that reimbursable expenses relate exclusively to Fair Plan purposes and nothing else.

Section 5.9912 adds subsection (o) which provides for the reimbursement of reasonable actual expenses to members of the Governing Committee incurred solely as a result of serving as a member of the Governing Committee. Subsection (o) also specifies that the Fair Plan Association will establish procedures for reimbursement.

No comments were received regarding the amendment.

The amendment is adopted under the Insurance Code Article 21.49A and §36.001. Article 21.49A, §3A authorizes the FAIR Plan Association Governing Committee to propose amendments to the plan of operation and submit them to the Commissioner of Insurance for approval. Article 21.49A charges the Commissioner with the authority to supervise the Association and to approve and adopt by rule the plan of operation developed by the Governing Committee. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.9912. Governing Committee.

(a) The Association shall be governed by a Governing Committee.

(b) The Governing Committee shall be composed of 11 voting members appointed by the Commissioner as follows:

(1) five members who represent the interests of insurers;

(2) four public members; and

(3) two members who are licensed agents.

(c) The Commissioner or the Commissioner's designated representative from within the Texas Department of Insurance shall serve as an ex-officio non-voting member.

(d) To be eligible to serve on the Governing Committee as a representative of insurers, a person must be a full-time employee of an authorized insurer.

(e) Members of the Governing Committee shall serve a term of two years.

(f) To stagger the terms of the Governing Committee, five members shall be selected randomly by the initial Governing Committee to serve a one-year term. Those members may be reappointed for a full term.

(g) If a Governing Committee member representing the interest of an insurer vacates the position prior to the end of the term, then the insurer who employed the Governing Committee member shall appoint a replacement within 45 days to serve the remainder of the term. If the insurer fails to appoint a replacement, the Commissioner shall appoint a replacement to serve the reminder of the term.

(h) If any other Governing Committee member vacates a position prior to the end of the term, then the Commissioner shall appoint a replacement to serve the remainder of the term.

(i) The Governing Committee shall meet as often as may be required to perform the general duties of administration of the Association or at the request of the Commissioner. Seven of the members of the Governing Committee shall constitute a quorum.

(j) The Governing Committee may promulgate guidelines consistent with state law and the plan of operation to govern such internal operations as investments, accounting, audit, personnel, underwriting rules, inspections, and claims practices. The guidelines shall be in writing.

(k) The Governing Committee may appoint committees as it deems necessary to carry out the purpose and operations of the Association. Such committees may include an Executive Committee, a Reinsurance Committee, a Finance & Audit Committee, an Underwriting Committee, an Agent Relations Committee, a Depopulation Committee and a Claims Committee.

(l) The Governing Committee may undertake a public education program to assure that the services of the Association receive adequate public attention. The Governing Committee may adopt a written program for decreasing the overall utilization of the Association as a source of insurance. The Association may adopt depopulation plans to reduce the number of risks insured by the Association.

(m) The Governing Committee shall exercise all of the Association's powers not delegated to others pursuant to this plan of operation.

(n) The Governing Committee may propose amendments to the plan of operation to the Commissioner for approval.

(o) Members of the Governing Committee may be reimbursed for their reasonable actual expenses incurred solely as a result of serving as a member of the Governing Committee. The FAIR Plan Association will establish procedures for reimbursement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 25, 2005.

TRD-200504821
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: November 14, 2005
Proposal publication date: July 29, 2005
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (commission or TCEQ) adopts amendments to §§114.2, 114.50, 114.51, and 114.53; and corresponding revisions to the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP). Sections 114.50 and 114.51 are adopted *with changes* to the proposed text as published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3817). Sections 114.2 and 114.53 are adopted *without changes* to the proposed text and will not be republished.

The commission adopts these revisions to Chapter 114, Control of Air Pollution from Motor Vehicles, and to the SIP in order to control ground-level ozone in the El Paso ozone nonattainment area. The amendments and associated El Paso Motor Vehicle Emissions I/M SIP will be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The federal I/M regulations for ozone nonattainment areas classified as "serious" require that on-board diagnostic (OBD) testing be implemented beginning January 1, 2002. Those regulations also provide an option for an extension of up to 12 months, if a state could show good cause. In a prior I/M rulemaking effective November 20, 2001, the commission submitted a request for a one-year extension to delay the implementation of OBD testing requirements in the El Paso ozone nonattainment area. This action was taken based on the El Paso area having experienced five years with no monitored violations of the ozone standard. At the time, the commission revised the I/M rules to delay implementation of the OBD testing requirement in the El Paso program area until January 1, 2003, to allow the commission time to explore viable options and to take into consideration any changes in El Paso's attainment status.

At the request of community leaders and elected officials in El Paso, the commission adopted rules (December 2002) revising the I/M rules and exempting El Paso from OBD testing since El Paso had experienced five years with no monitored violations of the ozone standard. This was achieved through the implementation of volatile organic compounds (VOC) control strate-

gies including the two-speed idle (TSI) vehicle emissions testing program for all 2- to 24-year old gasoline-powered vehicles. Because El Paso reached attainment prior to the EPA's deadline for OBD-I/M startup (January 1, 2002) and OBD had not already been implemented, the commission removed the requirement in the rules for OBD implementation to begin in El Paso as of January 1, 2003. The OBD requirement was converted to a contingency measure. The contingency measure would be invoked by the commission with a notice in the *Texas Register* that OBD testing was required for the El Paso area to maintain attainment of the ozone national ambient air quality standard (NAAQS). The El Paso I/M program area would be required to initiate OBD testing 12 months after publication of the notice.

The previous rule required El Paso to continue TSI testing of all subject vehicles. The previous rule also required OBD testing contingent upon the commission publishing a *Texas Register* notice that OBD testing is required for the El Paso area to maintain attainment of the ozone NAAQS. The El Paso I/M program area was required to initiate OBD testing 12 months after publication of the notice.

Since the adoption of OBD as a contingency measure, the commission has become aware that many of the current TSI analyzers in place have become outdated and can no longer be effectively serviced. These analyzers will be unlikely to continue to operate properly due to lack of internal replacement components, and may not meet the state's minimum specifications required to provide critical vehicle inspection information to the Texas Information Management System (TIMS). Manufacturers have raised concerns about the feasibility of servicing these old analyzers and about the expense and availability of parts. Additionally, station owners are faced with expensive repairs that are required much more frequently because of the age of the analyzers.

In El Paso County, 69 of the 219 stations with analyzers can be updated with the proper equipment and software to meet current specifications. These analyzers can be updated with OBD testing equipment for an affordable cost of $1,200 to $2,500 per analyzer. All new TSI-OBD analyzers now being sold meet current specifications and operate on the current software that meets TIMS requirements.

Additionally, the commission has recognized that the vehicle fleet age in El Paso County is increasingly becoming OBD compliant beginning with model year 1996 vehicles. Over half of the registered vehicles in El Paso County are model year 1996 and newer. The combination of the necessity of upgrading the testing network and a vehicle fleet becoming more OBD compliant has precipitated the changes to the I/M program for El Paso County.

The amendments adopted in this rulemaking require TSI and OBD testing in the El Paso I/M program area beginning January 1, 2007. The adopted amendments revise rules related to the implementation of the state's I/M program in El Paso. The adopted rules require all gasoline-powered 1996 and newer model year motor vehicles equipped with OBD systems registered and primarily operated in El Paso County to be tested using EPA-approved OBD test procedures. All pre-1996 model year gasoline-powered motor vehicles registered and primarily operated in El Paso County must be tested using the EPA-approved TSI test. Emissions test stations in the El Paso program area are required to offer both TSI testing and OBD testing to the public beginning on the effective date of the rules. Additionally, the amendments reference updated vehicle emissions testing equipment specifications, which now include new EPA OBD communications components, known as controller area network (CAN).

This I/M program for El Paso is an important on-road mobile source control strategy that will support an El Paso eight-hour ozone maintenance plan and El Paso carbon monoxide redesignation maintenance plan.

SECTION BY SECTION DISCUSSION

Throughout this rulemaking package, minor administrative changes were made to be consistent with Texas Register requirements and other agency rules for clarity and better readability.

Subchapter A, Definitions

The amendment to §114.2, Inspection and Maintenance Definitions, adds a new definition "Controller area network (CAN)" and renumbers the remaining definitions accordingly. The new definition defines a term that is specific to the state I/M program. Also, the title of Chapter 114, Subchapter C, is updated in the introductory text of this section.

Subchapter C, Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties

Division 1, Vehicle Inspection and Maintenance

The amendment to §114.50, Vehicle Emissions Inspection Requirements, deletes the requirement that all vehicles registered and primarily operated in Dallas, Tarrant, and Harris Counties shall be tested using a TSI test through April 30, 2002, in §114.50(a)(1) because TSI testing is no longer required in Dallas, Tarrant, and Harris Counties. The previously existing paragraphs (2) - (5) are renumbered as paragraphs (1) - (4).

The commission revised §114.50 from proposal to delay implementation of the OBD testing requirement until January 1, 2007, to allow inspection station owners additional time to upgrade their existing TSI equipment or to purchase new OBD/TSI test equipment. The delay in implementation of OBD for El Paso is in response to a request from the Honorable Norma Chávez, State Representative, District 76, Texas House of Representatives (Representative Chávez), and inspection station owners. The implementation date of January 1, 2007, will prevent consumer confusion because all inspection stations will be required to offer both TSI and OBD testing beginning on that date. Adopted §114.50(a)(4)(A) requires that El Paso continue TSI testing through December 31, 2006. Adopted §114.50(a)(4)(B) and (C) states that beginning January 1, 2007, all 1996 and newer model year vehicles equipped with OBD systems shall be tested using EPA-approved OBD test procedures and all 1995 and older model year vehicles shall be tested using the TSI test. Adopted §114.50(a)(4)(D) specifies that all vehicle emissions inspection stations in the El Paso program area offer both TSI and OBD tests to the public beginning January 1, 2007.

References made to complying with requirements contained in the Texas I/M SIP are deleted to clarify program requirements in §114.50(a)(1)(B), (2)(B), (3)(B) and (E); (b)(2), (6)(B), and (8); and (d)(1) and (2). The commission revised §114.50(b)(2) from proposal by adding the phrase "and this chapter" to make it clear that the I/M program to which the federal government is subject includes the rules in Chapter 114, and by changing "relating to" to "concerning" for consistency with Texas Register requirements and other agency rules. Section 114.50(b)(6)(B) is further

modified by adding "specified in 37 TAC §23.93 (relating to Vehicle Emissions Inspection Requirements)." Section 114.50(d)(2) is modified by adding "and to commit an offense specified in Texas Transportation Code, §548.603 (concerning Fictitious or Counterfeit Inspection Certificate or Insurance Document)."

The amendment to §114.51, Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers, updates the requirements for vehicle emissions testing equipment. This section specifies application, certification, maintenance, and service requirements for manufacturers or distributors of vehicle emissions testing equipment seeking approval of an exhaust gas analyzer or analyzer system for use in the Texas I/M program. Section 114.51(a) previously specified a date of October 15, 2001, for the exhaust gas analyzer technical specifications known as "Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program," and for "Specifications for On-Board Diagnostics II for Use in the Texas Vehicle Emissions Testing Program." The adopted amendment updates the reference to both vehicle emissions testing equipment specifications with their new version date of May 1, 2005. The revised specifications include a new EPA communications component requirement, known as CAN. The commission revised §114.51(e) from proposal by removing an "a" to correct a grammatical error and by replacing the word "his" with "the executive director's" to remove a gender reference.

Section 114.53, Inspection and Maintenance Fees, establishes a fee schedule for the different counties, which must be paid for the vehicle emissions inspection at an inspection station. Section 114.53(a)(1) is amended by deleting the TSI fee requirement associated with deleted §114.50(a)(1), because TSI is no longer the required test in Dallas, Tarrant, and Harris Counties. The previously existing paragraphs (2) - (4) in subsection (a) are renumbered as paragraphs (1) - (3). There are no changes to the current annual emissions test fee of $14. Section 114.53(a)(1) provided that if a resolution is passed by the El Paso County Commissioners Court to participate in the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP), there will be an additional fee of $3.00, making the test fee in El Paso County $17. The administrative fee from each TSI test would be $5.50 ($2.50 state administrative fee plus $3.00 to fund the LIRAP). Adopted revisions to §114.53(a)(1) specify that if a resolution is passed by the El Paso County Commissioners Court to participate in LIRAP, the test fee in El Paso County would be $16 and the administrative fee would be $4.50 ($2.50 state administrative fee plus $2.00 to fund the LIRAP) from each TSI or OBD test fee. These administrative fees will be remitted to the Texas Department of Public Safety (DPS) by the inspection station owners at the time inspection station owners purchase inspection stickers. Also, renumbered paragraphs (1) - (3) in subsection (a) are modified to reflect the renumbering of references, as discussed earlier in this preamble, and the acronyms ASM-2 and OBD are added to improve clarity.

In addition to the adopted rule amendments, the revisions to the SIP narrative clarify the new program elements, such as applicability changes; performance standards; emissions testing network type; adequate tools and resources; emissions testing; affected vehicle populations; test procedures, standards, and test equipment; motorist compliance enforcement; and the implementation schedule.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225 because they do not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

While the I/M program taken as a whole is intended to protect the environment and reduce risks to human health from environmental exposure, the intent of the adopted rules is to continue the program already in place while upgrading the test options that are offered. Therefore, these amendments to Chapter 114 are not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. The rules will not have an adverse material impact on the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the continuation of the existing program will not impose new burdens on the public. If El Paso County chooses to participate in LIRAP, the emissions test fee will increase by $2.00 per vehicle. The impact of an increase of this amount will not be material. In addition, the benefits of the LIRAP, including improved air quality, will accrue to the public in the affected area. Operators of testing stations, as the regulated community, will choose whether to upgrade or replace their test equipment, but will expect to recoup the expense through the continuation of the I/M program. Operators may elect not to participate in the vehicle emissions inspection and I/M program.

Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted rulemaking does not meet any of the four applicability requirements. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking action. The I/M program was created specifically in response to the requirements of the Federal Clean Air Act (FCAA) in 42 United States Code (USC) and the state law implementing the program. Under 42 USC, §7410, states are required to adopt a SIP that provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. The continuation of the I/M program with adjustments for improved technology, as a strategy to maintain the ozone NAAQS, is in accord with existing law.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted amendments and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The commissions's assessment indicates that Chapter 2007 does not apply to the adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The primary purpose of this rulemaking action is to upgrade and continue the existing emissions testing program in place in El Paso County as a SIP strategy for the control of ground-level ozone in the El Paso ozone nonattainment area. The amendments require station

operators to upgrade or replace emissions testing equipment in order to continue to participate in the I/M program, which was implemented under the FCAA and Texas Health and Safety Code (THSC), §§382.201 - 382.216. The requirement to upgrade emissions analyzers will assure the continued availability of emissions testing to the public and will support the availability of parts and service for the equipment. The adopted rules are not a government action that affects private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the adopted rules do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adopted rulemaking is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and therefore requires that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission determined that under 31 TAC §505.22, this rulemaking action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and ozone levels will be reduced as a result of the adopted rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR) to protect and enhance air quality in the coastal area (31 TAC §501.32). This rulemaking will not have a detrimental effect on SIP emission reduction obligations relating to maintenance of the ozone NAAQS by continuing the existing TSI testing portion of the I/M program and implementing new OBD testing requirements. This rulemaking action complies with 40 CFR. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies.

PUBLIC COMMENT

The commission held a public hearing on this proposal on July 19, 2005, at 6:30 p.m. at the City of El Paso Council Chambers, 2 Civic Center Plaza, 2nd Floor. At the June 15, 2005, commissioners' agenda for rule proposal, Representative Chávez requested that the commission extend the public comment period two weeks from the proposed July 19, 2005, closing date to August 2, 2005. The commission granted the two-week extension requested by Representative Chávez. Written and/or oral comments were received from Representative Chávez; EPA; and six inspection station owners: Nidal Brum representing All Tech Auto Center (All Tech), Jose Perez representing Arrow Discount Automotive (Arrow), Brett Conner representing Bob's Big Boys Toys (BBT), Juan Jimenez representing Jay's Automotive (Jay's), Robert Rodela representing Rodela's Service (Rodela's), and Dennis Martinez representing Zenitram Automotive Services (Zenitram).

RESPONSE TO COMMENTS

Representative Chávez provided oral and written testimony and supports the program, but with changes. All commenters expressed support of an I/M program. Representative Chávez, Jay's, and Rodela's opposed the May 1, 2006, start date of TSI/OBD testing and requested more time before the implementation of OBD testing.

All Tech, Arrow, BBT, and Zenitram testified that they support the introduction of OBD technology. Representative Chávez commented that she supports the I/M program because it is responsible for helping El Paso to attain the NAAQS for ozone and to pursue redesignation to attainment status for carbon monoxide. EPA commented that it supports the changes to the I/M program rules because they are a logical outgrowth of a program that needs updating.

The commission appreciates the support for the vehicle emissions testing program and concurs that OBD technology is needed to supplement TSI testing in El Paso. Since the inception of TSI testing in El Paso, the subject vehicle fleet has changed dramatically. In 2005, over 60% of all vehicles in El Paso County were OBD compliant. OBD technology provides for a more accurate assessment of the vehicle emissions related components. In addition, OBD systems also provide more information to help auto technicians diagnose and properly repair vehicles during their first visit to the repair shop, saving time and money for consumers.

Representative Chávez, Jay's, and Rodela's opposed the timing of the proposal requiring TSI and OBD testing beginning May 1, 2006. They requested a phase-in approach to allow more time for the purchase of replacement equipment. Representative Chávez expressed concern that the May 1, 2006, effective date does not give inspection station owners enough time to purchase and replace the existing equipment with the new updated equipment. Representative Chávez suggested phasing out the existing TSI-only program by December 31, 2006, and proposed rule language that would allow stations already equipped with OBD testing equipment to begin OBD testing for 1996 and newer model vehicles beginning on May 1, 2006. Further, Representative Chávez proposed that stations with TSI equipment be allowed to continue TSI testing through January 1, 2007, with no requirement to purchase OBD test equipment until that date. In addition, Jay's and Rodela's commented that they do not want to transition to OBD as long as their TSI equipment is still operational.

The commission has made every effort to consider the concerns of the emissions testing industry. Purchasing new testing equipment is a business decision, and it is the responsibility of the station owner to determine if the investment is worth the cost. All suggestions and concerns were thoroughly researched. Viable options have been considered and incorporated into the development of the El Paso I/M program upgrade.

The commission agrees with the commenters that the implementation date of January 1, 2007, will allow time for inspection stations to plan and budget for the upgrade or purchase of OBD/TSI testing equipment. In order to give all station owners an equitable amount of time to budget for the upgrade or to purchase new equipment, the commission is now requiring all inspection stations to offer both OBD and TSI testing to the public beginning January 1, 2007. However, the commission maintains that in order to avoid confusion by consumers, all inspection stations must offer only TSI testing to the public until the implementation date of January 1, 2007. Stations equipped with OBD test equipment prior to the implementation date of OBD testing will not gain an advantage, nor will they be disadvantaged, because only TSI testing may be conducted at all testing stations before January 1, 2007.

The commission has revised §114.50 in response to the comments and adopts a new implementation date of January 1, 2007. Beginning on January 1, 2007, all emissions testing

stations will be required to offer both OBD and TSI testing to the public.

Representative Chávez commented that there are no legal deadlines by which these rules must be proposed, adopted, or made effective, so the effective date should be based on input from stakeholders and the public and should only be determined after all public comment has been considered. Additionally, Representative Chávez stated that the debate and policy regarding the I/M program should be driven by air quality concerns and public participation, not by equipment vendors or by TCEQ staff.

The commission concurs that no legal deadlines exist for the proposal, adoption, or effective date of these amendments to the rules. Due to obsolescence, most of the equipment analyzers in use in El Paso no longer can be effectively serviced. These analyzers are unlikely to continue to operate properly due to lack of internal replacement components, and may not meet the state's minimum specifications required to provide critical vehicle inspection information to the TIMS. Manufacturers of the existing vehicle emissions TSI analyzers participating in the El Paso I/M program notified the commission last year that, due to the age of many analyzers in El Paso, maintenance for those analyzers would end in January 2006.

The EPA requires all vehicle I/M programs to upgrade and implement OBD testing to complement the collateral requirement imposed on vehicle manufacturers in recent years to install OBD components in motor vehicles. OBD testing is far more advanced, accurate, and efficient than TSI testing. The commission has chosen to continue the El Paso I/M program as a measure to ensure continued attainment of the NAAQS. Coupled with the continuation of the I/M program is the decision to keep pace with improved technology that makes the program more efficient and effective. As a result of EPA requirements and in response to improved technology, manufacturers of vehicle emissions testing equipment are producing only equipment capable of both TSI and OBD testing. These manufacturers have little economic incentive to continue to provide parts and service for TSI equipment that is for all practical purposes obsolete.

The commission has balanced the requirement to upgrade the I/M program to include OBD testing against the cost to station owners and to the public. The commission has also considered the demonstrated improvement in air quality in El Paso and the need to remain vigilant to protect that improvement from potential decline. The commission has also weighed the advantages to the public, and to the protection of air quality, of upgrading to better emissions testing technology. The commission does not agree that its consideration of all viewpoints has resulted in an unfair weight having been assigned to any one of those viewpoints. The commission has agreed to change the date in the rule from the proposed May 1, 2006, implementation date to the implementation date here adopted, January 1, 2007, as a result of its own reconsideration process and in response to this and other comments received.

Representative Chávez commented that the commission has not followed its rule (§114.50(a)(5)) adopted in 2002, that implementation of the contingency measure of OBD testing would only follow a determination by the commission that activation of contingency measures was necessary to maintain attainment of the NAAQS in El Paso. Representative Chávez disagreed with the justification offered in this rule proposal to implement OBD testing because the commission has determined that many of the TSI analyzers have become outdated and that parts for these analyzers will not be available.

Under 42 USC, §7410, states are required to adopt a SIP that provides for "implementation, maintenance, and enforcement" of the primary NAAQS in each air quality control region of the state. The continuation of the I/M program with adjustments for improved technology, as a strategy to maintain the ozone NAAQS, is in accord with existing law. Further, the El Paso I/M program is an important on-road mobile source control strategy that the commission has chosen to continue as an active measure in order to support both an El Paso eight-hour ozone maintenance plan and El Paso carbon monoxide redesignation maintenance plan. Section 114.50(a)(5)(B) requires the implementation of contingency measures in the El Paso area following publication of notice in the *Texas Register* of the commission's determination that such measures are necessary to remain in attainment of the NAAQS. In adopting §114.50(a)(5)(B), the commission established one procedure for implementing contingency measures when needed. However, the rule did not limit the commission to following only the §114.50(a)(5)(B) procedure to implement contingency measures, nor did the rule limit the measures the commission may implement to address air quality problems.

The commission has proposed implementing OBD testing in the El Paso area for several reasons. Prominent among those reasons is that manufacturers and service representatives have notified the commission that a majority of the emissions testing analyzers have become outdated or can no longer be repaired because of lack of working components. The new analyzers being sold in the area and those analyzers that have been or are capable of being updated are OBD compatible, thus preparing the testing network for the new testing program.

The adoption of §114.50(a)(5) in 2002, which identified OBD as a contingency measure, was the last significant change in the El Paso I/M program rules. Since that time, the vehicle population in El Paso has changed considerably. Model year 1996 and newer vehicles, which are OBD compatible, now make up over 60% of the vehicle population. The commission has become aware that 54 of the 219 current TSI analyzers in place have become outdated and may no longer be effectively serviced past May 1, 2006. Another 96 analyzers may no longer be effectively serviced past December 31, 2006. The requirement to upgrade emissions analyzers will assure the continued availability of emissions testing to the public and will support the availability of parts and service for the equipment. Annual I/M testing not only identifies high-polluting vehicles, but it also encourages vehicle owners to maintain and repair their vehicles. When tested with the current TSI emissions test, it is possible for model year 1996 and newer vehicles to pass the inspection even with the "Check Engine" light on the dashboard illuminated (a computer indication that one of the vehicle's emissions control components is not working properly). The commission recognizes that this condition may be detrimental to the effectiveness of the El Paso I/M program.

The commission does not agree that its justifications for implementing OBD testing are in conflict with existing law. The commission did not revise the rule in response to this comment.

Representative Chávez suggested and supports a new provision that requires inspection stations to purchase new OBD equipment before they can become permitted (licensed). Representative Chávez proposed that existing stations wanting to become licensed would first be required to purchase TSI/OBD equipment. Additionally, any station losing its license would be required to purchase new OBD equipment before a new license would be issued.

The commission appreciates the suggestion. By establishing January 1, 2007, as the implementation date to begin OBD/TSI testing, all stations open to the public will be required to offer both OBD and TSI testing. This would include new stations, existing stations, or any station that may have been previously suspended. The commission does not impose specific requirements regarding the model or brand of equipment stations must possess in order to become licensed, nor are changes to licensing procedures being adopted. Although the adopted rules do not require stations to upgrade or replace equipment until January 1, 2007, stations will not be authorized to continue operating as emissions testing stations unless they provide both TSI and OBD testing beginning on January 1, 2007, regardless of the date they became licensed.

EPA commented that it has in-house a previous I/M SIP submittal that moves OBD to a contingency measure. EPA requested that TCEQ ask for that submission to be withdrawn upon submission of the El Paso Redesignation and Maintenance Plan SIP revision.

The commission agrees that the previous SIP submission included a rule change and SIP revision that moved OBD to a contingency measure (Rule Log No. 2002-068-114-AI, December 4, 2002). SIP documents may be viewed on the TCEQ's SIP Web site at *http://www.tceq.state.tx.us/nav/eq/sip.html*. The adopted rules and associated SIP revision provide for the implementation of OBD as an active control measure in the I/M program in El Paso beginning on January 1, 2007. The rules and SIP submittal likewise remove OBD as a contingency measure. Efforts to maintain attainment of the NAAQS for ozone and carbon monoxide depend, in part, upon the continuation of the I/M program in El Paso. Both monitoring data and air modeling support redesignation to attainment status for the El Paso area. It is expected that future revisions of the ozone and carbon monoxide SIPs will incorporate continuation of OBD as an active control measure and will correspondingly request its removal as a contingency measure. The commission has made no changes to the adopted rules in response to this comment.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.2

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and §5.013, which states the commission's authority over various statutory programs. The amendment is also adopted under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the Texas Clean Air Act (TCAA)), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendment is also adopted under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to administer the TCAA and to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.013, which authorizes the commission to designate air quality control regions in order to implement air quality standards; §382.019, which provides the commission the authority to adopt rules that specify the method to be used to control and reduce emissions from engines used to propel land vehicles; §382.202, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities; and §382.205, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment.

The adopted amendment implements TWC, §§5.013, 5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.019, 382.202, and 382.205.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504902
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 17, 2005
Proposal publication date: July 1, 2005
For further information, please call: (512) 239-0348

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SUBCHAPTER C. VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES

DIVISION 1. VEHICLE INSPECTION AND MAINTENANCE

30 TAC §§114.50, 114.51, 114.53

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which provide the commission with the general powers to carry out its duties and authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and §5.013, which states the commission's authority over various statutory programs. The amendments are also adopted under THSC, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of THSC, Chapter 382 (the TCAA), and to adopt rules that differentiate among particular conditions, particular sources, and particular areas of the state. The amendments are also adopted under THSC, §382.002, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.013, which authorizes the commission

to designate air quality control regions in order to implement air quality standards; §382.019, which provides the commission the authority to adopt rules to control and reduce emissions from engines used to propel land vehicles; and THSC, Subchapter G, §§382.201 - 382.216, which provides the commission the authority by rule to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the requirements of FCAA, §§7401 *et seq*., to coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of the NAAQS, and to fund the establishment of the LIRAP.

The adopted amendments implement TWC, §§5.013, 5.102, 5.103, and 5.105; and THSC, §§382.002, 382.011, 382.012, 382.019, and 382.201 - 382.216.

§114.50. Vehicle Emissions Inspection Requirements.

(a) Applicability. The requirements of this section and those contained in the Texas Inspection and Maintenance (I/M) State Implementation Plan (SIP) shall be applied to all gasoline-powered motor vehicles 2 - 24 years old and subject to an annual emissions inspection, beginning with the first safety inspection. Military tactical vehicles, motorcycles, diesel-powered vehicles, dual-fueled vehicles that cannot operate using gasoline, and antique vehicles registered with the Texas Department of Transportation are excluded from the program. Safety inspection facilities and inspectors certified by the Texas Department of Public Safety (DPS) shall inspect all subject vehicles, in the following program areas, as defined in §114.2 of this title (relating to Inspection and Maintenance Definitions), in accordance with the following schedule.

(1) This paragraph applies to all vehicles registered and primarily operated in the Dallas-Fort Worth (DFW) program area.

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties equipped with on-board diagnostic (OBD) systems shall be tested using United States Environmental Protection Agency (EPA)-approved OBD test procedures.

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Collin, Dallas, Denton, and Tarrant Counties shall be tested using an acceleration simulation mode (ASM-2) test, or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas shall offer both the ASM-2 test and the OBD test, except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator must petition the DPS in accordance with the rules and procedures established by DPS.

(2) This paragraph applies to all vehicles registered and primarily operated in the extended DFW (EDFW) program area.

(A) Beginning May 1, 2003, all 1996 and newer model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties equipped with OBD systems shall be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2003, all pre-1996 model year vehicles registered and primarily operated in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall be tested using an ASM-2 test, or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas shall offer both the ASM-2 test and the OBD test, except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator must petition the DPS in accordance with the rules and procedures established by DPS.

(3) This paragraph applies to all vehicles registered and primarily operated in the Houston-Galveston-Brazoria (HGB) program area.

(A) Beginning May 1, 2002, all 1996 and newer model year vehicles registered and primarily operated in Harris County equipped with OBD systems shall be tested using EPA-approved OBD test procedures.

(B) Beginning May 1, 2002, all pre-1996 model year vehicles registered and primarily operated in Harris County shall be tested using an ASM-2 test, or a vehicle emissions test approved by the EPA.

(C) All vehicle emissions inspection stations in affected program areas shall offer both the ASM-2 test and the OBD test, except low volume emissions inspection stations. If an owner or operator wishes to have his or her station classified as a low volume emissions inspection station, the station owner or operator must petition the DPS in accordance with the rules and procedures established by DPS.

(D) Beginning May 1, 2003, all 1996 and newer model year vehicles equipped with OBD systems and registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties shall be tested using EPA-approved OBD test procedures.

(E) Beginning May 1, 2003, all pre-1996 model year vehicles registered and primarily operated in Brazoria, Fort Bend, Galveston, and Montgomery Counties shall be tested using the ASM-2 test procedures, or a vehicle emissions test approved by the EPA.

(4) This paragraph applies to all vehicles registered and primarily operated in the El Paso program area.

(A) All vehicles shall be tested using a two-speed idle (TSI) test through December 31, 2006.

(B) Beginning January 1, 2007, all 1996 and newer model year vehicles equipped with OBD systems shall be tested using EPA-approved OBD test procedures.

(C) Beginning January 1, 2007, all pre-1996 model year vehicles shall be tested using a TSI test.

(D) Beginning January 1, 2007, all vehicle emissions inspection stations in the El Paso program area shall offer both the TSI test and OBD test.

(b) Control requirements.

(1) No person or entity may operate, or allow the operation of, a motor vehicle registered in the DFW, EDFW, HGB, and El Paso program areas that does not comply with:

(A) all applicable air pollution emissions control related requirements included in the annual vehicle safety inspection requirements administered by DPS, as evidenced by a current valid inspection certificate affixed to the vehicle windshield; and

(B) the vehicle emissions I/M requirements contained in this subchapter.

(2) All federal government agencies shall require a motor vehicle operated by any federal government agency employee on any property or facility under the jurisdiction of the federal government agency and located in a program area to comply with all vehicle emissions I/M requirements specified in Texas Health and Safety Code,

Subchapter G, §§382.201 - 382.216 (concerning Vehicle Emissions), and this chapter. Commanding officers or directors of federal facilities shall certify annually to the executive director, or appointed designee, that all subject vehicles have been tested and are in compliance with the Federal Clean Air Act (42 United States Code, §§7401 *et seq*.). This requirement shall not apply to visiting federal government agency, employee, or military personnel vehicles as long as such visits do not exceed 60 calendar days per year.

(3) Any motorist in the DFW, EDFW, HGB, or El Paso program areas who has received a notice from an emissions inspection station that there are recall items unresolved on his or her motor vehicle, should furnish proof of compliance with the recall notice prior to the next vehicle emissions inspection. The motorist may present a written statement from the dealership or leasing agency indicating that emissions repairs have been completed as proof of compliance.

(4) A motorist whose vehicle has failed an emissions test may request a challenge retest through DPS. If the retest is conducted within 15 days of the initial inspection, the retest is free.

(5) A motorist whose vehicle has failed an emissions test and has not requested a challenge retest or whose vehicle has failed a challenge retest must have emissions-related repairs performed and must submit a properly completed vehicle repair form (VRF) in order to receive a retest. In order to receive a waiver or time extension, the motorist must submit a VRF or applicable documentation as deemed necessary by DPS.

(6) A motorist whose vehicle is registered in the DFW, EDFW, HGB, or El Paso program areas, or in any county adjacent to a program area and whose vehicle has failed an on-road test administered by the DPS shall:

(A) submit the vehicle for an out-of-cycle vehicle emissions inspection within 30 days of written notice by the DPS; and

(B) satisfy all inspection, extension, or waiver requirements of the vehicle emissions I/M program specified in 37 TAC §23.93 (relating to Vehicle Emission Inspection Requirements).

(7) A subject vehicle registered in a county without an I/M program that meets the applicability criteria of subsection (a) of this section and the ownership of which has changed through a retail sale as defined by Texas Occupations Code, §2301.002, is not eligible for title receipt or registration in a county with an I/M program unless proof is presented that the vehicle has passed an approved vehicle emissions inspection within 90 days before the title transfer. The evidence of proof required may be in the form of the vehicle inspection report (VIR) or another proof of the program compliance as authorized by DPS. All 1996 and newer model year vehicles with less than 50,000 miles are exempt from the test-on-resale requirements of this paragraph.

(8) State, governmental, and quasi-governmental agencies that fall outside the normal registration or inspection process shall comply with all vehicle emissions I/M requirements for vehicles primarily operated in I/M program areas.

(c) Waivers and extensions. A motorist may apply to the DPS for a waiver or an extension as specified in 37 TAC §23.93, which defer the need for full compliance with vehicle emissions standards for a specified period of time after failing a vehicle emissions inspection.

(d) Prohibitions.

(1) No person may issue or allow the issuance of a VIR, as authorized by DPS, unless all applicable air pollution emissions control related requirements of the annual vehicle safety inspection and the vehicle emissions I/M requirements are completely and properly performed in accordance with the rules and regulations adopted by DPS and the commission. Prior to taking any enforcement action regarding this provision, the commission shall consult with DPS.

(2) No person may allow or participate in the preparation, duplication, sale, distribution, or use of false, counterfeit, or stolen safety inspection certificates, VIRs, VRFs, vehicle emissions repair documentation, or other documents that may be used to circumvent applicable vehicle emissions I/M requirements and to commit an offense specified in Texas Transportation Code, §548.603 (concerning Fictitious or Counterfeit Inspection Certificate or Insurance Document).

(3) No organization, business, person, or other entity may represent itself as an emissions inspector certified by the DPS, unless such certification has been issued under the certification requirements and procedures contained in Texas Transportation Code, §§548.401 - 548.404.

(4) No person may act as or offer to perform services as a Recognized Emissions Repair Technician of Texas, as designated by DPS, without first obtaining and maintaining DPS recognition.

§114.51. Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers.

(a) Any manufacturer or distributor of vehicle testing equipment may apply to the executive director of the commission or his appointee, for approval of an exhaust gas analyzer or analyzer system for use in the Texas Inspection and Maintenance (I/M) program administered by the Texas Department of Public Safety. Each manufacturer shall submit a formal certificate to the commission stating that any analyzer model sold or leased by the manufacturer or its authorized representative and any model currently in use in the I/M program will satisfy all design and performance criteria set forth in "Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program," dated May 1, 2005, or in "Specifications for On-Board Diagnostics II for Use in the Texas Vehicle Emissions Testing Program," dated May 1, 2005. Copies of these documents are available at the commission's Central Office, located at 12100 Park 35 Circle, Austin, Texas 78753. The manufacturer shall also provide sufficient documentation to demonstrate conformance with these criteria including a complete description of all hardware components, the results of appropriate performance testing, and a point-by-point response to each specific requirement.

(b) All equipment shall be tested by an independent test laboratory. The cost of the certification shall be absorbed by the manufacturer. The conformance demonstration shall include, but is not limited to:

(1) certification that equipment design and construction conform with the specifications referenced in subsection (a) of this section;

(2) documentation of successful results from appropriate performance testing;

(3) evidence of necessary changes to internal computer programming, display format, and data recording sequence;

(4) a commitment to fulfill all maintenance, repair, training, and other service requirements described in the specifications referenced in subsection (a) of this section. A copy of the minimum warranty agreement to be offered to the purchaser of an approved vehicle exhaust gas analyzer shall be included in the demonstration of conformance; and

(5) documentation of communication ability using protocol provided by the commission or the commission Texas Information Management System (TIMS) contractor.

(c) If a review of the demonstration of conformance and all related support material indicates compliance with the criteria listed in subsections (a) and (b) of this section, the executive director or his appointee may issue a notice of approval to the analyzer manufacturer that endorses the use of the specified analyzer or analyzer system in the Texas I/M program.

(d) The applicant shall comply with all special provisions and conditions specified by the executive director or his appointee in the notice of approval.

(e) Any manufacturer or distributor that receives a notice of approval from the executive director or the executive director's appointee for vehicle emissions test equipment for use in the Texas I/M program may be subject to appropriate enforcement action and penalties prescribed in the Texas Clean Air Act or the rules and regulations promulgated thereunder if:

(1) any information included in the conformance demonstration as required in subsection (b) of this section is misrepresented resulting in the purchase or operation of equipment in the Texas I/M program that does not meet the specifications referenced in subsection (a) of this section; or

(2) the applicant fails to comply with any requirement or commitment specified in the notice of approval issued by the executive director or implied by the representations submitted by the applicant in the conformance demonstration required by subsection (b) of this section; or

(3) the manufacturer or distributor fails to provide on-site service response by a qualified repair technician within two business days of a request from an inspection station, excluding Sundays, national holidays (New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, and Christmas Day), and other days when a purchaser's business might be closed;

(4) the manufacturer or distributor fails to fulfill, on a continuing basis, the requirements described in this section or in the specifications referenced in subsection (a) of this section; or

(5) the manufacturer fails to provide analyzer software updates within six months of request and fails to install analyzer updates within 90 days of commission written notice of acceptance.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504903
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 17, 2005
Proposal publication date: July 1, 2005
For further information, please call: (512) 239-0348

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER J. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM

40 TAC §§700.1001, 700.1003, 700.1005, 700.1007, 700.1009, 700.1011, 700.1013, 700.1015, 700.1017

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), new §§700.1001, 700.1003, 700.1005, 700.1007, 700.1009, 700.1011, 700.1013, 700.1015, and 700.1017, in its Child Protective Services chapter. New §§700.1005, 700.1009, and 700.1011 are adopted with changes to the proposed text published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4796). New §§700.1001, 700.1003, 700.1007, 700.1013, 700.1015, and 700.1017 are adopted without changes to the proposed text and will not be republished. Senate Bill 6 of the 79th Legislature required implementation of a Relative and Other Designated Caregiver Program by March 1, 2006, to provide initial transitional payments, annual reimbursements for expenses, and support services to certain non-licensed individuals who provide care to children in their extended family. Traditionally, relatives who provide placement services for children in DFPS custody have not received specific financial compensation from the State, although some families and children have qualified for assistance under other criteria in other agencies. These rules outline the eligibility for these services, maximize the benefit to those most in need, and ensure that the provision of such services does not exceed the available dollars appropriated for the biennium.

The new sections will function by ensuring that relatives and other designated caregivers will receive some reimbursement for their care of children in DFPS conservatorship.

No public comments were received regarding adoption of the new sections. However, DFPS is revising the following sections as a result of internal comment. In §700.1005(a)(2), DFPS is deleting the requirement that receipts are needed to receive the annual reimbursement. In §700.1009, DFPS is deleting paragraph (4) because §700.1011 addresses the annual reimbursement criteria. In §700.1011, DFPS is changing all dates from March 1, 2006, to September 1, 2005, and adding the phrase "provided the child is still residing with the relative who incurred the expense" in paragraph (b)(2) to allow more people to be eligible for the reimbursement.

The new sections are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services (DFPS); Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The new sections implement the Family Code, Chapter 264, as amended by §1.62 of Senate Bill 6, 79th Legislature.

§700.1005. What types of cash assistance are available?

(a) Subject to the availability of funds, eligible caregivers may receive two types of cash assistance:

(1) an initial, one-time cash payment of not more than $1,000 per sibling group to defray costs incurred for essential child care items at the time of placement; and

(2) an annual reimbursement of not more than $500 per child for DFPS approved child- related expenses.

(b) DFPS may further clarify in policy specific conditions or criteria caregivers must meet to receive this cash assistance or any other services or benefits in connection with this program, including what costs incurred for essential child care items may be defrayed, what expenditures are appropriate for reimbursement, and situations where the full initial, one-time payment may not be awarded.

§700.1009. Who is eligible for the annual reimbursement?

Caregivers meeting the eligibility requirements specified in §700.1003 of this title (relating to What are the eligibility requirements for caregiver assistance?) are eligible, including:

(1) caregivers that are entitled to the initial, one-time cash payment;

(2) subsequent caregivers that didn't qualify for the initial, one-time cash payment because a different caregiver was previously paid under this provision on behalf of the same children; and

(3) caregivers that didn't qualify for the initial, one-time cash payment because the caregiver was eligible for supplemental financial assistance under the Grandparents Program.

§700.1011. Are there additional eligibility restrictions for the annual reimbursement?

(a) Yes:

(1) the household income of the caregiver must not exceed 300% of poverty, as determined by federal poverty guidelines;

(2) the caregiver must continue to comply with the signed caregiver assistance agreement; and

(3) the children:

(A) must continue to be in the conservatorship of DFPS or the caregiver must be awarded permanent managing conservatorship after September 1, 2005, for children that were previously in the conservatorship of DFPS;

(B) must be in the caregiver's care at the time the expense is incurred; and

(C) must continue to be placed with the caregiver.

(b) The following limitations also apply to the reimbursements:

(1) If the annual reimbursement is paid to a previous caregiver on behalf of the same children, a subsequent caregiver is not eligible for reimbursement for the remainder of the year.

(2) If the placement occurred before September 1, 2005, the reimbursement is limited to expenses incurred after September 1, 2005, provided the child is still residing with the relative who incurred the expense.

(3) Caregivers subsequently appointed as permanent managing conservator are only eligible for three additional annual reimbursement payments, assuming all other eligibility requirements and restrictions are met.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504887
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2005
Proposal publication date: August 19, 2005
For further information, please call: (512) 438-3437

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SUBCHAPTER P. PREPARATION FOR ADULT LIVING
DIVISION 2. EDUCATION AND TRAINING VOUCHER PROGRAM

40 TAC §§700.1611, 700.1613, 700.1615, 700.1617, 700.1619, 700.1621, 700.1623, 700.1625

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), new §§700.1611, 700.1613, 700.1615, 700.1617, 700.1619, 700.1621, 700.1623, and 700.1625, without changes to the proposed text published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3561).

Under the federal law, *Promoting Safe and Stable Families Amendments of 2001*, a new program was created to provide postsecondary educational and training vouchers (ETV) for certain eligible foster care youth, including those who have aged out of foster care and those adopted out of foster care at a certain age. This law amended the Chaffee Foster Care Independence Act, making this new program subject to federal audit. The ETV Program allows DFPS to expand and supplement the current assistance provided to eligible former and current foster care youth and specifically, helps them to begin, continue and/or complete their educational and vocational goals toward achieving gainful employment and independence.

The new sections will function by ensuring that youth eligible for ETV program benefits will be able to take full advantage of the program. The anticipated results will be better outcomes for youth in adult living.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes FPS to propose and adopt rules to facilitate implementation of Department programs.

The new sections implement recent changes to Title IV-E, §477 of the Social Security Act (42 U.S.C. 677), known as the Chafee Foster Care Independence Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2005.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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CHAPTER 702. GENERAL ADMINISTRATION SUBCHAPTER E. MEMORANDUM OF UNDERSTANDING WITH OTHER STATE AGENCIES

40 TAC §702.413

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §702.413, without changes to the proposal as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4622). The Communities In Schools (CIS) program was transferred from DFPS to the Texas Education Agency (TEA) by the 78th Legislature. TEA has adopted new Communities In Schools rules. The justification for the repeal is to delete this Memorandum of Understanding (MOU), which was between DFPS and TEA and is now obsolete.

The repeal will function by deleting the obsolete rule.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The repeal implements the Education Code, Subchapter E, Chapter 33.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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CHAPTER 704. PREVENTION AND EARLY INTERVENTION SERVICES SUBCHAPTER E. COMMUNITIES IN SCHOOLS

40 TAC §§704.401, 704.403, 704.405, 704.407, 704.409, 704.411

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§704.401, 704.403, 704.405, 704.407, 704.409, and 704.411, without changes to the proposal as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4622). The Communities In Schools (CIS) program was transferred from DFPS to the Texas Education Agency (TEA) by the 78th Legislature. TEA has adopted new Communities In Schools rules. The justification for the repeal is to delete the CIS rules from the DFPS agency rules.

The repeals will function by ensuring that the CIS rules will be found at the agency where the program resides, TEA.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The repeals implement the Education Code, Subchapter E, Chapter 33.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gerry Williams
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CHAPTER 720. 24-HOUR CARE LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§720.66, 720.233, 720.335, 720.406, and 720.905, without changes to the proposed text published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4798). The rules are the result of requirements in Senate Bill (SB) 6, 79th Legislature. The bill directs the Executive Commissioner to adopt rules to implement drug-testing requirements for residential child-care facilities. The amendments change the former Department's name to reflect the Licensing Division, and require residential child-care facilities to inform Licensing after learning of an allegation that a person who directly cares for or has access to a child in care has abused drugs within the past seven days.

The amendments will function by enhancing the protection of children and improving the quality of care of children.

During the comment period, DFPS received comments from Advocacy, Incorporated and Homes4Good Adoption and Foster Care. A summary of the comments and responses follows:

Comment concerning §§720.66(a), 720.406(b), 720.905(c): One commenter recommended that the department adopt language in 25 TAC 417, Subchapter K, relating to Abuse, Neglect and Exploitation in TDMHMR Facilities, to require reporting of serious incidents to Licensing and the child's parent or managing conservator immediately, if possible, but no more than one hour after suspicion or after learning of the incident.

Response: The change in language from "workday" to "within 24 hours" was for clarity to current rule, not to change the timeframe for reporting serious incidents. DFPS is adopting these sections without change.

Comment concerning §720.233: One commenter stated that it is unclear if reporting requirements apply to agency homes.

Response: This reporting requirement for alleged drug abuse to the Licensing Division applies to independent homes and is not required of agency foster homes. (For an agency home, the child-placing agency is responsible for this reporting requirement.) DFPS is adopting this section without change.

SUBCHAPTER A. STANDARDS FOR CHILD-PLACING AGENCIES

40 TAC §720.66

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the HRC §42.063, as amended by §1.106 of Senate Bill 6, 79th Legislature.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gerry Williams
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SUBCHAPTER E. STANDARDS FOR FOSTER FAMILY HOMES

40 TAC §720.233

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the HRC §42.063, as amended by §1.106 of Senate Bill 6, 79th Legislature.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. STANDARDS FOR FOSTER GROUP HOMES

40 TAC §720.335

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective

Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the HRC §42.063, as amended by §1.106 of Senate Bill 6, 79th Legislature.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. CONSOLIDATED STANDARDS FOR 24-HOUR CARE FACILITIES

40 TAC §720.406

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the HRC §42.063, as amended by §1.106 of Senate Bill 6, 79th Legislature.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. STANDARDS FOR EMERGENCY SHELTERS

40 TAC §720.905

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the HRC §42.063, as amended by §1.106 of Senate Bill 6, 79th Legislature.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 727. LICENSING OF MATERNITY FACILITIES

SUBCHAPTER A. STRUCTURE OF A MATERNITY HOME

40 TAC §727.111

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §727.111, without changes to the proposed text published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4802). The change will conform this chapter to the requirements imposed on residential child-care facilities as a result of Senate Bill (SB) 6, 79th Legislature. The bill directs the Executive Commissioner to adopt rules to implement drug-testing requirements for residential child-care facilities. The amendment changes the former Department's name to reflect the Licensing Division, and requires the maternity homes to inform Licensing after learning of an allegation that a person who directly cares for or has access to a child in care has abused drugs within the past seven days.

The amendment will function by enhancing the protection of children and improving the quality of care of children.

During the comment period, DFPS received comments from Advocacy, Incorporated. The commenter recommended that the department adopt language in 25 TAC 417, Subchapter K, relating to Abuse, Neglect and Exploitation in TDMHMR Facilities, to require reporting of serious incidents to Licensing and the child's parent or managing conservator immediately, if possible, but no more than one hour after suspicion or after learning of the incident. The change in language from "workday" to "within 24 hours" was for clarity to current rule, not to change the timeframe for reporting serious incidents. DFPS is adopting this section without change.

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the HRC §42.063, as amended by §1.106 of Senate Bill 6, 79th Legislature.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 745. LICENSING
SUBCHAPTER F. BACKGROUND CHECKS
DIVISION 2. REQUESTING BACKGROUND CHECKS

40 TAC §§745.615, 745.623, 745.625, 745.626, 745.631, 745.637

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.615, 745.623, 745.625, and 745.631; and new §745.626 and §745.637, concerning background checks, in its Licensing chapter. The amendments to §745.623 and §745.625 and new §745.626 are adopted with changes to the proposed text published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4623). The amendments to §745.615, and §745.631, and new §745.637 are adopted without changes to the proposed text and will not be republished.

The changes are the result of requirements concerning background checks in Senate Bill (SB) 6, 79th Legislature and to provide clarification to current rules. New §745.615 clarifies that a child-care operation must request a background check on all employees, including all employees intended to be hired, who will provide direct care or have direct access to a child in care. The amendment to §745.623 adds requirements that all residential child-care operations must request background checks on-line through the DFPS website and that child day care operations can request background checks on-line or by submitting a paper request. The amendment to §745.623 also adds a requirement that all child-care operations must include a person's driver's license number with the required identifying information submitted to conduct a background check. The amendment to §745.625 adds the requirement that a residential child-care operation must submit a background check request on a person before he or she provides direct care or has direct access to a child in the operation. New §745.626 states that if a residential operation does not receive the results of a background check on a person who provides direct care or has direct assess to a child in care, the operation may obtain its own criminal history check through the Department of Public Safety (DPS) and if the DPS check verifies no criminal history, it can allow the person unsupervised client access until it receives the results of the DFPS background check. The amendment to §745.631 adds licensed child-care homes to the list of operations that cannot be issued a permit until DFPS receives the results of the applicant's background check. New §745.637 states that DFPS will provide the operation requesting the background check with information in our records regarding the person's previous history in residential child care, as long as the information is not confidential.

The amendments and new sections will function by ensuring that background checks are conducted prior to people being able to provide direct care or have direct access to a child in residential child-care facilities, which will provide greater protection for children in care.

During the comment period, DFPS received comments from Homes4Good, STARRY, Inc., Panhandle Assessment Center, Merchants of Hope Children's Home, Boys Haven, The Child Placement Center, Juliette Fowler Homes, Inc., and Presbyterian Children's Homes and Services. A summary of the comments and responses follows:

Comments concerning §745.623:

(1) One commenter asked that DFPS recognize that on-line data is not always accurate and error free, and that the information DFPS receives from DPS may not always be accurate.

Response: DFPS works closely with DPS to ensure that we are getting accurate data on background checks. DFPS monitors the information that it receives and quickly addresses any problems that occur. DFPS is not making changes as a result of this comment.

(2) Concerning subsection (a)(6), one commenter asked if a Texas identification number could be used in place of a driver's license number for people who don't drive.

Response: An identification number is issued by DPS, so it can be used in place of a driver's license number for people that do not drive. To make this point more clearly, DFPS is adding a state issued identification card number in this subsection.

(3) Concerning subsection (c), one commenter suggested that a paper copy of the background check request form be submitted

after the on-line request is made so that DFPS does not compromise the safety of children that DFPS intends to protect.

Response: Online background checks will better protect the safety of children by giving the results to the child-care operation in a timelier manner. All background check records are kept electronically in a secure system, which is backed up nightly. DFPS is not making changes as a result of this comment.

Comments concerning §745.626:

(1) One commenter asked that the following be clarified:

(A) How the DPS website works.

Response: Anyone can go into the DPS website and set up an account to run background checks. They can then purchase credits, which will allow them to run checks with these credits.

(B) An operation only has to use the DPS website if the operation does not receive the DFPS results back within two working days.

Response: A residential child-care operation has the option of conducting a DPS background check if it does not receive the results from the department within two working days.

(C) An operation cannot hire a person until it gets the results from DFPS or the one from DPS.

Response: A residential child-care operation must not hire a person who will provide direct care or have direct access to a child in care until it receives the results of the background check from DFPS or the check that it ran through DPS. The operation can hire a person who does not provide direct care or have direct access to a child in care prior to receiving the results back.

DFPS is not making changes as a result of these comments.

(2) Two commenters asked for clarification on whether this rule applies to child placing agencies, as the current question only applies to residential child-care facilities.

Response: Senate Bill 6 amended the definition of "residential child-care facility" to include child placing agencies. The change was effective September 1, 2005. However, for clarification purposes, DFPS is revising the title of the section to say, "How soon after I request a background check on a person can that person provide direct care or have direct access to a child in a residential child-care operation?" The term "residential child-care operation" has previously been defined in DFPS rules to include child placing agencies. DFPS is also revising §745.623(c) to reflect a residential child-care operation.

(3) One commenter stated that federal law prohibits them from keeping background checks in its personnel files.

Response: DFPS is adopting this section with a change to subsection (a) to state "The results of the criminal history check obtained from DPS must be kept in a sealed envelope in the person's personnel record or in another location, accessible to us. In accordance with Texas Government Code, §411.085, these results should not be released or disseminated for any other purpose."

(4) Concerning subsection (a), one commenter asked if a public background check company could be used instead of DPS to run background checks while waiting for the DFPS check.

Response: Public background check companies can be used because the companies get information from DPS. DFPS is not making changes as a result of this comment.

Comments concerning §745.637:

(1) One commenter asked if the previous employment information will be sent automatically with the cleared notices or will the operation have to ask for it.

Response: The clearance, match letters, and emails have been revised so that the operation will automatically receive this information whenever they request a background check. DFPS is not making changes as a result of this comment.

(2) One commenter supported this rule and stated that it will help prevent persons from moving around from one operation to another. The same commenter suggested that a clarification memo be provided with these rules that describes what information will be provided.

Response: DFPS will provide the operation with previous history in residential child-care. DFPS is not making changes as a result of this comment.

General comments: One commenter asked that there be a mechanism for agencies to resolve discrepancies between what comes back on its DPS checks and the DFPS check.

Response: Private entities can only receive conviction records from DPS. DFPS receives all criminal records including arrest information, pending charges, dismissal, convictions, etc. Therefore there will be differences in what an operation receives and what DFPS receives. DFPS will inform the operation when there is relevant information and discuss how it must be handled. DFPS is not making changes as a result of this comment.

DFPS is adopting §745.625 with a clarification that a background check is a background check request.

The new sections and amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The new sections and amendments implement the HRC §42.056, as amended by §1.103 of Senate Bill 6, 79th Legislature.

§745.623. How do I request a background check?

(a) You must verify and send us the following identifying information for every person required to be checked in §745.615 of this title (relating to On whom must I request background checks?):

(1) Name (last, first, middle), including any maiden or married names or alias;

(2) Date of birth;

(3) Sex;

(4) Social security number;

(5) Current and previous address;

(6) Driver's license or a state issued identification card number; and

(7) Race (this information does not have to be verified).

(b) If you operate a child day-care operation, you can complete a request for a background check on-line through the DFPS website or send in a request via a signed form provided by your local Licensing office.

(c) If you operate a residential child-care operation, you must submit your requests on-line through the DFPS website.

§745.625. When must I submit a request for a background check?

(a) You must submit a request for a background check:

(1) When you submit your application for a permit to us;

(2) When a non-client resident 14 years old or older lives or moves into your home or operation, or a non-client resident becomes 14 years old;

(3) When you apply to be a foster or adoptive parent; and

(4) Every 24 months after each person's name was first submitted.

(b) In addition, if you operate a residential child-care operation:

(1) You must submit a background check request before you hire a new person who will provide direct care or have direct access to a child in care; and

(2) For an employee who will not provide direct care or have direct access to a child in care, you must submit a background check request within two business days after the new person is hired or is present in your operation.

(c) In addition, if you operate a child day-care operation, you must submit a background check request within two business days after a new person is hired or is present in your operation.

§745.626. How soon after I request a background check on a person can that person provide direct care or have direct access to a child in a residential child-care operation?

(a) If you do not receive the results of the background check within two working days of submission, you may obtain a criminal history check on the person through the Department of Public Safety (DPS) at http://records.txdps.state.tx.us/. If your DPS check verifies that the person has no criminal history, you may allow the person to have unsupervised client contact until you receive the results of the background check performed by the DFPS. The results of the criminal history check obtained from DPS must be kept in a sealed envelope in the person's personnel record or in another location, accessible to us. In accordance with Texas Government Code, §411.085, these results should not be released or disseminated for any other purpose.

(b) Otherwise, you may not allow the person to provide direct care or have direct access to a child in care until you receive the results of the person's background check.

(c) For verifying foster homes, foster group homes, and adoptive homes, please see §745.633 of this title (relating to Can a child-placing agency (CPA) verify a foster home, foster group home, or adoptive home prior to receiving the results of the background checks?).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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SUBCHAPTER H. RESIDENTIAL CHILD-CARE MINIMUM STANDARDS
DIVISION 6. DRUG TESTING

40 TAC §745.4151

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), new §745.4151, with changes to the proposed text published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4803). The rule is the result of requirements in Senate Bill (SB) 6, 79th Legislature. The bill directs the Executive Commissioner to adopt rules to implement drug-testing requirements for residential child-care facilities. New §745.4151 adds the drug testing provisions of SB 6, including a model drug testing policy. The model drug testing policy applies to employees that have direct contact with children in care. This policy does not apply to foster parents that are verified by child-placing agencies. Mandatory drug testing is required for (1) pre-employment, and the individual cannot have access to children until the drug test results are available; (2) all employees on a random and unannounced basis; and (3) employees who are alleged to be abusing drugs.

The section will function by enhancing the protection of children and improving the quality of care of children.

During the comment period, DFPS received comments from Youth In View, Star Ranch RTC, Panhandle Assessment Center, Juliette Fowler Homes, Hendrick Home for Children, Presbyterian Children's Homes and Services, STARRY, Inc., Merchants of Hope, and Homes4Good Adoption and Foster care. A summary of the comments and responses follows:

General Comments:

(1) One commenter wanted clarification on the percentage of employees that should be initially tested prior to implementing a random drug-testing schedule.

Response: Current employees do not require initial drug testing prior to implementing a random drug-testing schedule. Only applicants for employment from the date of adoption of these rules must be initially tested prior to implementing a random drug-testing schedule. DFPS is not making changes as a result of this comment.

(2) One commenter wanted clarification on the percentage of employees that should be tested annually when setting up the new random drug testing requirements. Most companies use the federal guidelines of testing 50% of employees on an annual basis (however this does vary).

Response: DFPS allows residential child-care operations the discretion to determine an appropriate percentage of employees to be randomly tested annually. DFPS is not making changes as a result of this comment.

(3) One commenter stated that foster parents should be tested rather than professional licensed staff members. Drug testing

employees for the safety of children in care is meaningless if the child's primary caregiver (foster parent) is not routinely drug tested since foster parents, unlike staff, have little supervision.

Response: Foster parents are not considered employees. SB 6, Human Resources Code §42.057(b) requires employees to be initially and randomly drug tested. A child-placing agency may develop a more stringent drug testing policy than DFPS' model policy to include initially and/or randomly drug testing its foster parents. DFPS is not making changes as a result of this comment.

(4) One commenter disagreed with the preamble that states that child-care rates charged to the public are set at the discretion of the residential child-care providers.

Response: Child-care rates set by the state for state foster care are not at the discretion of residential child-care providers. However, providers can choose to increase rates for private placements to absorb increases in operating costs.

(5) One commenter supported the direction of the drug testing policy although the procedures are elaborate and would require some training for providers for successful implementation of this policy.

Response: The rules also permit a residential child-care operation to implement its own drug testing policy. Licensing staff can provide technical assistance in implementing the proposed drug testing policy. DFPS is not making changes as a result of this comment.

(6) One commenter wanted clarification concerning the model drug testing policy's tolerance level for employee drug abuse.

Response: The model drug testing policy allows for different disciplinary actions at the discretion of the residential child-care operation. An employee *may* be suspended pending receipt of written test results, is subject to discipline, up to and including discharge, and/or may be offered the opportunity to complete a rehabilitation program at the employee's expense (§745.4151(c)(6)(B), (C), and (E)). If the employee who tests positive presents a risk to children, the employee may not be employed in a position that involves direct contact with children (§745.4151(c)(6)(D)). DFPS is not making changes as a result of this comment.

(7) One commenter wanted clarification about a possible conflict with meeting Health Insurance Portability and Accountability (HIPAA) requirements and the requirement to report positive drug test results.

Response: A residential child-care operation must report an *allegation* that a person has abused drugs that *triggers* drug testing, not drug test results. Regardless, HIPAA only governs the use and disclosure of "protected health information" created or maintained by "covered entities." (See 45 CFR §164.502(a) for the general prohibition on disclosures). "Protected health information" is defined specifically to exclude: "employment records held by a covered entity in its role as employer" (45 CFR §160.103). Drug test results, as part of employment requirements, are employment records in the same way insurance information is an employment record in the hands of an employer. DFPS is not making changes as a result of this comment.

Comment concerning §745.4151(c)(2): One commenter wanted clarification whether volunteers have to be randomly tested as part of the employee pool or whether they can be randomly tested through a separate randomization which might better reflect the size of the pool and the decreased risk if they are in infrequent contact with children.

Response: The definition of "random drug testing" is set forth in §745.4151(c)(3)(C). This definition requires a testing cycle to vary in frequency and intervals and to select subjects randomly in a way that does not eliminate a person who has already been tested from being tested again. Moreover, each person must be subject to testing on a continuing basis. Testing volunteers through a separate randomization instead of as part of the employee pool would be acceptable so long as all criteria in the definition of "random drug testing" are met. DFPS is adopting this paragraph with a change in punctuation. In addition, DFPS is revising this paragraph to clarify that the policy applies to all contract employees that have direct contact with children in care and only volunteers that frequently and regularly have direct contact with children.

Comment concerning §745.4151(c)(4): One commenter stated that the expense to drug test applicants for employment is unreasonable.

(1) She would not hire anyone who presented with signs or symptoms of being under the influence of drugs or alcohol;

(2) Drug testing applicants would be time-consuming since the employee may decide not to stay with the job; and

(3) Maintaining the child/staff ratio when a staff member quits or is fired would be difficult when required to wait for drug test results.

Response: SB 6, §42.057(d) prohibits an employee from providing direct care or having access to a child in a residential child-care operation before completion of the employee's initial drug test. DFPS is not making changes as a result of this comment.

Comment concerning §745.4151(c)(8)(A): One commenter wanted clarification on whether this subsection refers to DFPS' or the licensed provider's drug testing policy and conditions.

Response: A residential child-care operation's drug testing policy may be more stringent than DFPS' model policy. Staff acknowledges the language is unclear and is adopting this subparagraph with changes to reflect that the drug testing policy refers to the residential child-care operation's policy.

Subsection (a) is adopted with a change to correct a *Texas Register* publishing error to allow a residential child-care operation the option to adopt the model drug testing policy or have a drug testing policy that meets or exceeds the criteria in the model policy.

The new section is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The new section implements the HRC §42.057, as amended by §1.104 of Senate Bill 6, 79th Legislature.

§745.4151. What drug testing policy must my residential child-care operation have?

(a) The Department of Family and Protective Services is required to adopt a model drug testing policy for residential child-care operations under the Human Resources Code, §42.057. Your residential child-care operation must either adopt the model drug testing policy or have a written drug testing policy that meets or exceeds the criteria in the model policy. Although this policy only covers drugs, coverage of alcohol may be included. The department recommends that an operation obtain legal advice before adopting and implementing any drug testing policy.

(b) Residential child-care operations must pay for any required drug tests, except as provided in subsection (c)(7) of this section.

(c) The mandatory criteria for the Model Drug Testing Policy For Residential Child-Care Operations include:

(1) Purpose. (Name of residential child-care operation) has a vital interest in ensuring the safety of resident children through the appropriate drug testing of employees, while also protecting the rights of the employees.

(2) Scope. This policy applies to all employees of residential child-care operations, including child-placing agencies, that have direct contact with children in care. It also applies to all contract employees that have direct contact with children in care and volunteers that frequently and regularly have direct contact with children. This policy does not apply to foster parents that are verified by child-placing agencies.

(3) Definitions. The following definitions apply to this section.

(A) Abusing drugs--The use of any:

(i) Drug or substance defined by the Texas Controlled Substances Act, Texas Health and Safety Code, Chapter 481; or

(ii) Prescription or non-prescription drug that is not being used for the purpose for which it was prescribed or manufactured.

(B) Drug testing--The scientific analysis of urine, blood, breath, saliva, hair, tissue, and other specimens for detecting a drug.

(C) Random drug testing--A testing cycle that varies the frequency and intervals that specimens are collected for testing and selects employees in a random manner that does not eliminate already tested employees from future testing. The testing should ensure all employees are subject to random testing on a continuing basis.

(D) Good cause to believe the employee may be abusing drugs--A reasonable belief based on facts sufficient to lead a prudent person to conclude that the employee may be abusing drugs. Sufficient facts may include direct observations of the employee using or possessing drugs, or exhibiting physical symptoms, including but not limited to slurred speech or difficulty in maintaining balance; erratic or marked changes in behavior, including a decrease in the quality or quantity of the employee's productivity, judgment, reasoning, and concentration and psychomotor control, accidents, and deviations from safe working practices; or any other reliable information.

(4) Mandatory drug testing.

(A) All applicants that are intended to be hired for employment are subject to pre-employment testing, and may not provide direct care or have access to a child in care until the drug test results are available;

(B) All employees are subject to random, unannounced drug testing;

(C) Any employee that is the subject of a child abuse or neglect investigation, when DFPS determines there is "good cause to believe the employee may be abusing drugs", must be drug tested within 24 hours of notification by DFPS to the residential child-care operation; and

(D) Any employee who is alleged to be abusing drugs must be tested within 24 hours, if there is "good cause to believe the employee may be abusing drugs."

(5) Drug testing procedures. All drug testing will:

(A) At a minimum screen for marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP);

(B) Use one of the following drug-testing methods:

(i) A drug test performed by a certified laboratory;

(ii) A testing kit with proven rates of false positives below 2% and false negatives below 8% on all drugs screened; or

(iii) Another testing method for which there is scientific proof of accuracy comparable to either of the first two choices, such as saliva, hair, or spray drug testing;

(C) Ensure the integrity and identity of the specimen collected from the time of collection to the time of disposal to minimize the opportunity for an employee to adulterate or substitute a specimen; and

(D) Preserve the privacy and rights of the person tested. This includes safeguarding the results of any test and maintaining them, so they remain confidential and free from unauthorized access.

(6) Discipline.

(A) An applicant or employee's consent to submit to drug testing is required as a condition of employment, and the refusal to consent may result in refusal to hire the applicant and disciplinary action, including discharge, against the employee for a refusal;

(B) An employee who is tested because there is "good cause to believe the employee may be abusing drugs," may be suspended pending receipt of written test results and further inquiries that may be required;

(C) An employee determined through drug testing to have abused drugs is subject to discipline, up to and including discharge;

(D) An applicant for employment or an employee determined through drug testing to have abused drugs may not be employed in a position with direct contact with children in care if the employee presents a risk of harm to children; and

(E) An employee determined through drug testing to have abused drugs may be offered the opportunity to complete a rehabilitation program at the employee's expense.

(7) Appeal. An applicant or employee whose drug test is positive may, at the employee's expense:

(A) Have an opportunity to explain and offer written documentation why there is another cause for the positive drug test;

(B) Request that the remaining portion of the sample that yielded the positive results, if available, be submitted for an additional independent test, including second tests to rule out false positive results; and/or

(C) Submit the written test result for an independent medical review.

(8) Documentation.

(A) All applicants that you intend to hire for employment and employees must be provided a copy of your drug testing policy and must sign a document consenting to these terms and conditions of employment.

(B) All drug test results will be kept for one year after an employee's last work day with the residential child-care operation, or until any investigation involving the person is resolved, whichever is later. The results must be available for review by Licensing Division within 24 hours of the request.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504894
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2005
Proposal publication date: August 19, 2005
For further information, please call: (512) 438-3437

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 7. RAIL FACILITIES
SUBCHAPTER B. CONTRACTS

43 TAC §7.11

The Texas Department of Transportation (department) adopts new §7.11, concerning Comprehensive Development Agreements. The amendments to §7.11 are adopted without changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4625) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTION

House Bill 2702, 79th Legislature, Regular Session, 2005, added Transportation Code, §91.054, to authorize the department to enter into a comprehensive development agreement that provides for the financing, design, acquisition, construction, maintenance, or operation of a rail facility or system.

Transportation Code, §91.054 authorizes the department, to the extent and in the manner that the department may enter into comprehensive development agreements under Transportation Code, Chapter 223, to enter into comprehensive development agreements under Chapter 91 with regard to rail facilities or systems. Section 91.054 provides that all provisions of Chapter 223 relating to comprehensive development agreements apply to comprehensive development agreements for rail facilities under Chapter 91.

Rules relating to comprehensive development agreements for turnpike or toll projects developed under Chapter 223 are contained in Chapter 27, Subchapter A of this title. As those rules have proven effective for the procurement of comprehensive development agreements for turnpike or toll projects, new §7.11 provides that, to the extent and in the manner that the department may enter into a comprehensive development agreement with respect to a turnpike or toll project under Chapter 27, Subchapter A, the department may enter into a comprehensive development agreement for the financing, design, acquisition, construction, maintenance, or operation of a rail facility or system.

Section 7.11 requires the department to utilize the processes and procedures provided in Chapter 27, Subchapter A when requesting qualifications and proposals or accepting unsolicited proposals for the financing, design, acquisition, construction, maintenance, or operation of a rail facility or system, when evaluating and ranking submissions and proposals, and when selecting the proposal that provides the best value to the department.

As authorized by Transportation Code, §91.054, new §7.11 provides that the department may combine in a comprehensive development agreement a rail facility or system and a turnpike or toll project. Section 7.11 also provides that rail facility and system have the meanings assigned by Chapter 91.

COMMENTS

No comments on the proposed new section were received.

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.003, which provides the commission with the authority to adopt rules necessary to implement Chapter 91.

CROSS REFERENCE TO STATUTE

Transportation Code, §91.054.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504930
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: November 17, 2005
Proposal publication date: August 12, 2005
For further information, please call: (512) 463-8630

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CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING
SUBCHAPTER A. TRANSPORTATION PLANNING

43 TAC §15.4

The Texas Department of Transportation (department) adopts amendments to §15.4, concerning the Unified Planning Work Program (UPWP). The amendments to §15.4 are adopted without changes to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4626) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Section 15.4 currently provides that travel outside the metropolitan area boundary (MAB) by metropolitan planning organization (MPO) staff and other agencies participating in the MPO planning process shall be approved by the department if funded with federal transportation planning funds.

Department approval of travel beyond metropolitan area boundaries is unduly burdensome on the department and the MPO. The adopted amendment removes this requirement and, instead, requires department approval of travel outside Texas. The amendments further provide that travel to Arkansas by the Texarkana MPO staff and travel to New Mexico by the El Paso MPO staff shall be considered in-state travel.

COMMENTS

One comment on the proposed amendments was received from the Association of Texas Metropolitan Planning Organizations (TEMPO). TEMPO agrees with the amendment to remove the requirement that the department approve travel beyond the metropolitan area boundary. The commenter raised other issues, outside the scope of the proposal. Department staff will review TEMPO's comments for possible future rule amendments.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code §201.101.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 25. TRAFFIC OPERATIONS

The Texas Department of Transportation (department) adopts the repeal of Subchapter G, §§25.400-25.409, and the simultaneous adoption of new Subchapter G, §§25.400-25.409 concerning the Information Logo Sign Program and Tourist-Oriented Directional (TOD) Sign Program. New §25.404 and §25.406 are adopted with changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5758). The remaining new §§25.400-25.403, §25.405, and §§25.407-25.409 and repeal of Subchapter G, §§25.400-25.409, are adopted without changes to the proposed text as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5758) and will not be republished.

EXPLANATION OF ADOPTED REPEALS AND NEW SECTIONS

Senate Bill 1137, 79th Legislature, Regular Session, 2005, requires the department to develop a TOD sign program for wineries or businesses related to agriculture or tourism. The legislation also directs the department to develop rules covering the operation and implementation of this program.

House Bill 2453, 79th Legislature, Regular Session, 2005, also requires the department to add a new service category to the Specific Information Logo Sign Program for pharmacies operating 24-hours a day.

The adopted rules for new Subchapter G are designed to implement the provisions of Senate Bill 1137 and House Bill 2453 as well as make general changes and updates to the existing Information Logo Sign Program. Many of the provisions in the rules were developed when the program was originally implemented in 1992. The Information Logo Sign Program is now fully operational and many of the original program guidelines are no longer necessary. The new rules have been developed to improve readability, reflect the statutorily mandated "best value" approach in the program contract, reflect current program management practices and simplify the existing program rules. The subchapter title has also been changed to reflect current practices.

Section 25.400. Purpose. Existing §25.400, Purpose, is repealed and replaced with new §25.400, Purpose, which is to establish the policies and procedures for the implementation of the Logo and TOD sign program. Changes to this section include the addition of the TOD sign program and deletion of the term "urban highways" to correspond to the new definition of eligible highways.

Section 25.401. Definitions. Existing §25.401, Definitions, is repealed and replaced with new §25.401, Definitions. Section 25.401 defines certain words and terms used in the subchapter. The majority of the terms remain unchanged in the new language. Various terms have been added to this section as necessary under the new TOD sign program including "major portion," "TOD sign panel," "TOD sign program," "TOD sign assembly," and "trailblazer sign."

Terms have also been added or amended to reflect the changes required in the Specific Information Logo Sign Program as required under House Bill 2453, including "pharmacy services," "primary motorist service," and "specific information logo sign assembly."

The terms "interstate highway" and "major shopping area" are no longer included. Location on an interstate highway is not required for participation in the Information Logo Sign Program and the definition of "retail shopping mall" has been modified and incorporated into new §25.406 regarding Major Shopping Area Guide Signs.

Section 25.402. Information Logo and TOD Sign Program. Existing §25.402, Information Logo Sign Program, is repealed and replaced with new §25.402, Information Logo and TOD Sign Pro-

gram. Section 25.402 addresses the issuance of a contract to develop, operate, and maintain both Logo and TOD signs.

New §25.402 requires the selected contractor to market the program statewide to have maximum impact. The vendor is required to contact all businesses participating in current sign programs to coordinate continued involvement. The contractor is required to obtain approval of the site plans prior to initiating the work. The contractor is required to provide annual reports and other reports as required by the department. The contractor is also required to supply monthly information regarding all participating entities and the location information for each sign.

New §25.402 prohibits the installation of signs by anyone other than the contractor, approved subcontractors, or the department. It also requires that the contractor maintain the signs.

New §25.402 provides the parameters for the fee the contractor can assess for installing and maintaining Logo and TOD signs. It also sets the requirements for payments to the contractor for the depreciated value of installed signs due to termination of the contract.

Specific requirements related to annual meetings, bonding, required permits/licenses and records required to be provided by the contractor are no longer included in the rule. These provisions will be included in the program contract as deemed necessary by the department.

The department is no longer required to inspect and monitor sign installation as part of this subchapter. The department considers this a routine and customary part of its duties and believes it is unnecessary to include as part of the program rules.

Section 25.403. Request for Proposals. Existing §25.403 and §25.404 regarding notice, proposal submission and contract award procedures are repealed and replaced with §25.403, Request for Proposals. The repealed sections have provisions that utilize the standard low-bid highway construction contract. All future information logo and TOD sign program contracts will be awarded based on the best value provided to the state. New §25.403 details the issuance of the request for proposal (RFP), proposal evaluation and what constitutes an eligible proposal. The prior provisions regarding contract selection were based on highway maintenance contract procedures, which will no longer be utilized. With the adopted language, the program will be managed under a purchase of services contract which includes the best value determination. With the new RFP format, details such as maximum proposal length, response dates, and contract award provisions are not necessary and will be included in the RFP.

The department will select the contractor based on the listed evaluation criteria. The evaluation criteria were selected as a basis to determine the contractor's ability to fulfill the program obligations. The proposals must show a full understanding of the project and the capability to undertake and perform the program obligations. The proposal must also address the approach or course of action for meeting the goals of the program. The proposal must document sufficient financial resources to carry out all functions. In addition, the proposal will be evaluated on the proposed cost to the participating businesses. The department will evaluate the proposals based on the plan presented and the services offered against the fees charged to achieve the best value to the state.

Due to the importance of reviewing complete proposals, a proposal that fails to comply with all requirements contained in the RFP will be ineligible for review and selection. This enables the department to conduct a fair and impartial selection. In addition, a proposal will be ineligible if it fails to guarantee the department recover the greater of the costs of implementing the program or at least 10% of the collected fees.

Section 25.404. Specifications for Information Logo Signs. Existing §25.404, Evaluation, is repealed and replaced with new §25.404, Specifications for Information Logo Signs. Minor changes have been made to this section to incorporate the 24-hour pharmacies into the specific Information Logo Sign Program, as required by House Bill 2453, and to make other minor changes to reflect current program practices.

"Pharmacy" sign priority for logo signs complies with the requirements of the United States Department of Transportation, Federal Highway Administration. In addition, the logo sign assembly is required to have the legend "24 HOUR Rx" displayed with pharmacy logos to ensure that the traveling public is aware that these businesses are open 24 hours a day.

Section 25.404 allows the word "PROPANE" to be included as supplemental information on logos for gas stations. The department believes this will be beneficial to the traveling public by providing additional information for those motorists seeking propane.

Section 25.404 also includes some changes to the major shopping area guide signs. Language is added to clarify that major shopping area guide signs are not installed as overhead signs. This reflects current practice within the program. It also changes the major shopping sign to a blue background to match other signs in the Information Logo and TOD sign programs. This will allow department personnel to readily identify these as signs maintained by a contractor.

With the full implementation of the program the department has found many of the existing rules unnecessary. The adopted rules no longer include the requirement that the department approve Specific Information Logo signs with more than two services prior to installation. The rule allows for no more than three types of services per sign assembly.

Also deleted from existing §25.404 is the language regarding close proximity interchanges. The former language allowed a logo sign assembly to contain the logos for businesses that are located at more than one highway exit. This provision does not reflect current practice by the department and therefore is not included in the new language.

Section 25.405. Commercial Establishment Eligibility. Existing §25.405, Specifications for Information Logo Signs, regarding general and specific information for commercial establishment eligibility, is repealed and replaced with §25.405, Commercial Establishment Eligibility. New or changed provisions include the following.

Non-self service gas stations are no longer required to have tire repair capabilities. The department believes that this requirement placed an unfair burden on non-self service stations.

Food establishments are required to serve meals that are prepared on site. This is included to ensure that food establishments participating in the program operate as full-service restaurants rather than as convenience facilities offering pre-packaged foods.

All camping facilities are no longer required to offer "modern sanitary facilities designed to service recreational vehicles. The de-

partment believes that not all camping sites should be required to have these types of facilities to participate in the program.

The provisions related to the eligibility for a pharmacy to receive a specific information logo sign are added as per the requirements of House Bill 2453. These include requirements that the pharmacy be open for business 24 hours of each day and provide pharmacy services as defined in the subchapter. In addition pharmacies are excluded from the provisions that allow commercial establishments to be farther than three miles from the eligible highways as required under the federal Manual of Uniform Traffic Control Devises.

The provisions related to variances are modified to note that no variances may be requested for the eligibility requirements for pharmacies. The statute specifically requires that only 24-hour pharmacies are allowed to participate in the program.

References to the "director's designee" are deleted since the revised definition of executive director now specifically includes the director's designee. This is not a substantive change.

Section 25.406. Major Shopping Area Eligibility. Existing §25.409, Major Shopping Area Eligibility, regarding the eligibility criteria for an entity to receive a major shopping area guide sign, is repealed and replaced with new §25.406, Major Shopping Area Eligibility. Section 25.406 establishes the criteria for a major shopping area to reflect recent trends in retail facilities. When the program was originally implemented, enclosed shopping malls were the typical applicants for this type of signing. Many shopping areas are now smaller in total size, not totally enclosed and consist of separate buildings of a unified theme.

New §25.406 allows the department greater flexibility in the type of documentation an applicant must submit to the department when requesting a variance from certain eligibility requirements. This change will allow the department to request less documentation if warranted.

Section 25.407. Logo Sign Program Operation. Existing §25.407, Program Operation, regarding the application and selection process for inclusion in the information logo sign program, is repealed and replaced with new §25.407, Logo Sign Program Operation. The adopted language includes provisions for major shopping area guide signs.

New §25.407 details the selection process for situations where there are more eligible business establishments than available sign spaces. New §25.407 allows the contractor, upon approval by the department, to set an application deadline for spaces on new or existing logo sign assemblies. The date is no longer specifically stated. This will allow for greater flexibility in establishing deadlines for participating businesses and also allow these dates to be more closely tailored to the overall beginning and end of the contract between the program contractor and the department. The department will ensure that any dates proposed by the contractor will not cause any undue hardship on program participants.

Section 25.407 includes information regarding the removal of business logo and major shopping area signs. It establishes the process for removal if the business ceases to exist, relocates and is no longer eligible, does not meet the requirements, or does not provide the replacement logo panel as requested. It also provides that if a major shopping area guide sign or logo sign is removed permanently due to actions of the department, that the participation agreement between the major shopping area or business is cancelled and that any funds paid to the program contractor will be refunded on a prorated basis.

Section 25.408. TOD Sign Program Operation. New §25.408 provides guidelines and eligibility requirements for participation in the TOD sign program as required by Senate Bill 1137.

New §25.408 specifies all general and specific requirements that an applicant must meet to obtain a TOD sign panel. As required by Senate Bill 1137, to be eligible for a TOD sign panel a facility must be a winery, farm, ranch, or other tourist-oriented destination.

Section 25.408 requires that to be eligible for a TOD sign panel, a major portion of a facility's visitors must have traveled more than 50 miles from the facility. Fifty miles was selected as the appropriate distance to determine tourist visitors due to the unique geography of the state. Texas is a large state and it is not uncommon for motorists to travel up to 50 miles on a single trip while simply conducting normal business or activities. The department believes this represents a reasonable distance to determine which visitors reside out of an eligible facility's general area.

The facility must provide a tourist-oriented service or product of significant interest to the traveling public. The department's goal is to ensure that an entity receiving a TOD sign panel is an actual tourist destination.

Additional general requirements are dictated by statute and are included in the rule for the reader's convenience. The facility is required by statute to comply with various state and federal laws regarding public accommodations. The facility must be located within 5 driving miles of an eligible highway as required by the state and federal Manual on Uniform Traffic Control Devices and be in compliance with the federal Highway Beautification Act of 1965.

The facility must also provide modern restrooms, drinking water, and be clean and in good repair as required for information logo sign participants. The department feels that these requirements reflect the reasonable expectations of the motoring public.

New §25.408 creates three categories of eligible facilities that may apply for a TOD sign panel: wineries, agritourism facilities and other commercial tourist-oriented facilities. This corresponds to language contained in Senate Bill 1137.

Wineries are required to produce wine on their premises, to conduct regularly scheduled tours or provide tours as requested, to market their product on premise, to have a wine tasting area on premise and have a winery permit as issued by the state of Texas. These requirements are designed to ensure that wineries receiving a TOD sign panel will be of interest to tourists and provide the types of activities and products tourists typically associate with wineries.

New §25.408 does not require standard hours of operation for a winery to receive a TOD sign panel. The department understands that many wineries operate on a limited schedule centered on weekends. The department believes that such a limitation could prevent a large number of wineries from participating in the program.

New §25.408 also adds specific requirements for entities wishing to receive a TOD sign panel under the agritourism category. To be eligible to receive a sign, an agritourism facility must produce an agricultural product, devote a minimum of five acres to the production of an agricultural product, conduct tours or provide

them upon request, market the product on the premises and be open 12 months a year or during the normal seasonal business period. The list outlines in new §25.408(a)(2)(B) contains the requirements under the Major Agricultural Interest Sign Program that was repealed under Senate Bill 1137.

These requirements ensure that facilities receiving a TOD sign panel under the agritourism category actually produce an agricultural product of significant interest to the public. The entity is required to stay open 12 months a year, or during the normal seasonal period for that type of business, to ensure that the public will be able to locate agritourist attractions.

Various examples of eligible agritourism facilities are provided, although this list is not intended to reflect every eligible facility.

New §25.408(a)(2)(C) adds specific requirements for the third category of an eligible facility, the tourist-oriented commercial businesses or entities. These types of facilities must produce a unique product or service of interest to tourists, be open for business at least five days a week including a Saturday or Sunday and be an independent enterprise that is not part of a franchise or national chain.

This category of facility is required to be open a minimum of five days a week because they serve tourist needs as well as serve as tourist attractions. The department believes that the public will have an expectation that these types of facilities, if included on the TOD sign panel, will be open for a significant portion of time.

The department also adds the requirement that such a facility not be part of a franchise or national chain. The department believes that this will be consistent with the requirement that all eligible facilities provide a unique or unusual product or service of interest to tourists.

Various examples of eligible commercial facilities are provided, although this list is not intended to reflect every eligible facility.

New §25.408(a)(3) provides a list of ineligible facilities for TOD sign panels. The department believes that these facilities are not consistent with the goal of the project to provide information regarding tourist attractions to the public. This list does not include all ineligible facilities but provides a sample of the types of businesses or locations that will not qualify.

Section 25.408 also provides that the department will make the final determination regarding an applicant's eligibility to participate in the TOD sign program.

Section 25.408 requires the facility to submit an application to the program contractor and for the contractor to verify all information as stated in the application. The section also requires the department to act to approve or disapprove an application within certain time limitations as required under Senate Bill 1137.

New language in §25.408 describes the specifications for TOD sign panels. Each TOD sign must meet all applicable provisions of the state and federal Manual on Uniform Traffic Control Devices and be fabricated and installed according to department requirements.

Section 25.408 sets out the general requirements for placement of TOD sign assemblies within state highway right-of-way. These provisions are included to ensure that TOD signs do not interfere with existing traffic control devices and are installed in a way that does not detract from motorist safety.

New §25.408 includes an order of priority for the assignment of TOD sign panels. The section allows for placement of no more than nine TOD sign panels per intersection approach. The department anticipates in some limited areas there might be more TOD sign applications than available panels. To address this type of situation the department is proposing a priority list derived from the language of Senate Bill 1137. The bill specifically lists wineries, and then generally states businesses related to agriculture or tourism including a farm, ranch, or other tourist activity. Since wineries are specifically listed, the department has listed them first on the priority list followed by agritourism and then other tourist-oriented businesses. The department believes this interpretation and priority listing is in accord with the statute and the intent of the legislation.

New §25.408 requires each assembly have no more than three TOD sign panels. The department believes that this will allow reasonable accommodation of most facilities wishing to participate in the program while ensuring that intersection approaches are not unduly crowded by the signs. The sign composition will be dictated by the available space and will include information allowed under the federal Manual of Uniform Traffic Control Devises at the department's discretion.

New §25.408(d) requires that facilities that wish to participate in the program, but that are located more than one turn off the eligible state highway, must place additional trailblazer signs directing motorists to the facility before the TOD sign panel will be installed. The participating facility is responsible for all costs and issues associated with the installation and maintenance of these trailblazer signs. This provision is added to ensure that motorists will be able to find the eligible facility when it is not located directly on an eligible portion of the state highway system.

Section 25.408 also provides for the conditions under which the department or program contractor may remove a TOD sign panel. This language is consistent with the provisions for specific logo and major shopping area signs.

Section 25.409. Appeal. Existing §25.408, Appeal, regarding appeals by both the contractor and businesses, or tourist entities, is repealed and new §25.409, Appeal, is adopted. The new rule does not alter the appeal process for claims by the contractor. As required by Transportation Code, §201.112, appeals by the contractor fall under the contract claim provisions of §§1.21-1.26.

The provisions regarding appeals by participating businesses and entities have been changed to provide a more streamlined and efficient approach. The appeals will now be made directly to the Director of the Traffic Operations Division. Section 25.409 states that the request must be in writing and received within 30 days of the adverse decision. The language provides the information the petition must include to ensure that the director will have the information needed to make a timely and well informed decision. The department believes this new appeal process will allow participants a more flexible, streamlined approach to resolving any issues between themselves and the program contractor.

COMMENTS

Comments on the proposed new sections were received. In addition, department staff made minor grammatical changes to §25.404(e)(3)(A) and §25.406(a)(1)(D) to improve readability.

COMMENT:

The Railroad Commission of Texas requested that the rules be amended to allow propane retail outlets to participate in the Tourist-Oriented Directional Sign (TODS) program. The Commission noted in their request that tourists often use propane services, that these tourists often rely on signing to find these dealers and that propane dealers meet many of the requirements as stated in the rules to qualify for a TODS sign.

RESPONSE:

The department disagrees with this comment. While we appreciate the commission's concerns, the department does not believe that propane dealers represent a tourist attraction. There are many businesses that support tourist activities and accommodate tourist needs that will not qualify for TODS signing. We believe that the legislation as enacted makes TODS signing available to those businesses or non-profit entities that provide a unique or unusual service or product of significant interest to the tourist community. The department does not believe that retail propane dealers serve as a tourist attraction.

COMMENT:

The department also received a comment on the use of the RV Friendly symbol on specific information logo signs, §25.404(b)(2). The commenter offered the comment in his capacity as a private citizen. The commenter requests that the rules be amended to allow the use of these symbols for those businesses whose facilities are designed to accommodate the on-site parking or movement of recreational vehicles.

RESPONSE:

The Federal Highway Administration has issued interim approval to allow states to utilize the RV Friendly symbol if the states program meets minimum guidelines. The department agrees with the comment that these symbols should be allowed for those participating businesses meeting the criteria outlined by the Federal Highway Administration. Accordingly, the department has added new subpart (E) to §25.404(b)(2).

SUBCHAPTER G. SPECIFIC INFORMATION LOGO SIGN PROGRAM

43 TAC §§25.400 - 25.409

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §391.091, which provides the commission with the authority to establish rules regarding the Information Logo Sign Program and Transportation Code, §391.099, which provides the commission with the authority to establish rules for the TOD Sign Program.

CROSS REFERENCE TO STATUTE

Transportation Code, §391.091 et seq.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504932

Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: November 17, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 463-8630

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SUBCHAPTER G. INFORMATION LOGO SIGN AND TOURIST-ORIENTED DIRECTIONAL SIGN PROGRAM

43 TAC §§25.400 - 25.409

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically Transportation Code, §391.091, which provides the commission with the authority to establish rules regarding the Information Logo Sign Program and Transportation Code, §391.099, which provides the commission with the authority to establish rules for the TOD Sign Program.

CROSS REFERENCE TO STATUTE

Transportation Code, §391.091 et seq.

§25.404. Specifications for Information Logo Signs.

(a) Specific information logo signs.

(1) Design. A specific information logo sign assembly shall:

(A) have a blue background with a white reflective border;

(B) contain a principal legend equal in height to the directional legend;

(C) meet the applicable provisions of the Texas MUTCD;

(D) have background material that conforms with department specifications for reflective sheeting;

(E) be fabricated, erected, and maintained in conformance with department specifications and fabrication details;

(F) provide vertical spacing and horizontal spacing for a balanced appearance of business logos.

(2) Content. A specific information logo sign shall contain:

(A) word legends for the following services: GAS, FOOD, LODGING, CAMPING, or "24 HOUR Rx";

(B) the exit number or, if exit numbers are not applicable, "NEXT EXIT";

(C) no more than six business logos on one logo sign assembly;

(D) no more than three types of services on a sign assembly; and

(E) no more than two dual logos.

(3) Placement. Subject to approval of the department, a specific information logo sign shall be installed or placed:

(A) to conform to the following order of placement along the direction of travel: PHARMACY, CAMPING, LODGING, FOOD, GAS;

(B) according to the following priorities where available space is limited: GAS, FOOD, LODGING, CAMPING, and PHARMACY;

(C) to take advantage of natural terrain;

(D) to have the least impact on the scenic environment;

(E) to avoid visual conflict with other signs within the highway right-of-way;

(F) with a lateral offset equal to or greater than existing guide signs;

(G) at least 800 feet from the previous interchange and at least 800 feet from the exit direction sign at the interchange from which the services are available;

(H) without blocking motorists' visibility of existing traffic control and guide signs;

(I) in locations that are not overhead;

(J) where a motorist, after following the sign(s), can conveniently re-enter the highway and continue in the original direction of travel; and

(K) at least 800 feet between two large guide signs, but not excessively spaced.

(4) Existing signs. Existing regulatory, warning, destination, guide, recreation, and cultural interest signs will not be removed; provided, however, that subject to the written approval of the department, such existing signs may be relocated by special permission of the department at the sole expense and responsibility of the contractor and only to the extent necessary to accommodate logo signs.

(b) Business logos.

(1) Design. A business logo:

(A) may not exceed 48 inches in width or 36 inches in height;

(B) may be any color or combination of colors; and

(C) may only be fabricated, erected, and maintained in conformance with current department specifications for aluminum signs and reflective sheeting.

(2) Content. A business logo may:

(A) consist of a registered trademark or a legend message identifying the name or abbreviation of the commercial establishment;

(B) contain supplemental information, limited to the word "DIESEL" or "PROPANE" on a gas logo, or "PROPANE" on a camping or gas logo, or the words "24 HOURS" on a gas or a food logo, the words "DIESEL", "PROPANE", and "24 HOURS" not to exceed six inches in height;

(C) contain a message, symbol, or trademark only if the message, symbol, or trademark does not resemble an official traffic control device; and

(D) contain text, symbols, or advertising only if the text, symbols, or advertising are related to the primary service of the specific information logo sign.

(E) contain an "RV Friendly" symbol indicating the business has facilities that accommodate the on-site movement and parking of recreational vehicles. The facility must meet the following criteria to be considered eligible to receive the RV Friendly symbol:

(i) roadway access and egress must be hard surface, free of potholes and needs to be at least 12 feet wide with a minimum swing radius of 50 feet to enter and exit the facility;

(ii) roadway access, egress, and parking facilities must be free of any electrical wires, tree branches, or other obstructions up to 14 feet above the surface;

(iii) facilities requiring short-term parking, such as restaurants or tourist attractions, are required to have 2 or more spaces that are 12 feet wide and 65 feet long with a swing radius of 50 feet to enter and exit the spaces;

(iv) fueling facilities with canopies are required to have a 14-foot clearance, and those selling diesel fuel are required to have pumps with non-commercial nozzles;

(v) fueling facilities must allow for pull-through a with swing radius of 50 feet;

(vi) for campgrounds, 2 or more spaces that are 18 feet wide and 45 feet long are required; and

(vii) businesses must also post directional signing on their sites, as needed, to those RV friendly parking spaces and other on-site RV friendly services, so that the motorist is given additional guidance upon leaving the public highway and entering the business establishment's property.

(c) Ramp signs.

(1) Design. A ramp sign shall:

(A) meet the applicable provisions of the Texas MUTCD;

(B) have a blue background with a white reflective border;

(C) conform with the latest department specifications for reflective sheeting for the background material of the sign; and

(D) be fabricated, erected, and maintained in conformance with the current department specifications for aluminum signs and roadside signs.

(2) Placement. Subject to approval by the department, a ramp sign may be placed along an exit ramp or access road, or at an intersection of an access road and crossroad when a commercial establishment's building or on-premise signing is not visible from that exit ramp, access road, or intersection.

(3) Content. A ramp business logo shall:

(A) be no larger than 24 inches in width and 18 inches in height;

(B) contain directional arrows and distances; and

(C) be a duplicate of the business logo erected on a specific information logo sign.

(d) Dual logos.

(1) An establishment may have two names displayed on a single logo sign panel if the establishment consists of:

(A) two food outlets in a shared space under common ownership; or

(B) gas and food outlets in a shared space under common ownership.

(2) The fee to a participating business for a dual logo will be the same as to the charge for a standard logo.

(3) No more than two dual logos may be installed per logo sign.

(4) Dual logos may not be installed on a specific information logo sign unless all available spaces for the "FOOD" or "GAS" specific service categories are full.

(5) If demand for space on a logo sign exceeds the available number of spaces, businesses requesting a dual logo must follow the same drawing process as described in §25.407 of this subchapter.

(e) Major shopping area guide signs.

(1) Design. A major shopping area sign shall:

(A) have a blue background with a white reflective legend and border;

(B) meet the applicable provisions of the Texas MUTCD;

(C) have background, legend, and border material that conforms to department specifications for reflective sheeting;

(D) not be illuminated externally or internally; and

(E) be fabricated, erected, and maintained in conformance with department specifications and fabrication details.

(2) Content. A major shopping area guide sign shall:

(A) contain the name of the major shopping area as it is commonly known to the public; and

(B) contain the exit number or, if exit numbers are not applicable, other directional information.

(3) Placement. Subject to approval of the department, a major shopping area guide sign shall be installed or placed:

(A) so that it is independently mounted;

(B) to take advantage of natural terrain;

(C) to have the least impact on the scenic environment;

(D) to avoid visual conflict with other signs within the highway right-of-way;

(E) with a lateral offset equal to or greater than existing guide signs;

(F) for both directions of travel on the eligible urban highway;

(G) without blocking motorists' visibility of existing traffic control and guide signs; and

(H) in locations that do not include overhead installation.

(4) Existing signs. Existing regulatory, warning, destination, guide, recreation, and cultural interest signs will not be removed; provided, however, that subject to the written approval of the department, such existing signs may be relocated by special permission of the department at the sole expense and responsibility of the contractor and only to the extent necessary to accommodate major shopping area guide signs.

(f) Major shopping area ramp signs.

(1) Design. A major shopping area ramp sign shall:

(A) have a blue background with a white reflective legend and border;

(B) meet the applicable provisions of the Texas MUTCD;

(C) have background, legend, and border material that conforms to department specifications for reflective sheeting;

(D) be fabricated, erected, and maintained in conformance with department specifications and fabrication details; and

(E) not be illuminated internally or externally.

(2) Content. A ramp sign shall contain:

(A) the name of the major shopping area as it is commonly known to the public; and

(B) directional arrows and distances.

(3) Placement. Subject to approval of the department, the major shopping area ramp sign(s) may be placed along an exit ramp or access road, or at an intersection of an access road and crossroad if the major shopping area driveway access, buildings, or parking areas are not visible from that exit ramp, access road, or intersection.

§25.406. Major Shopping Area Eligibility.

(a) Eligibility criteria. To be eligible to have a major shopping area guide sign, the major shopping area must:

(1) consist of a group of 10 or more retail and other commercial establishments that:

(A) have a gross building area of not less than 650,000 square feet;

(B) is located within close proximity to one another;

(C) employs a unifying theme carried out by individual shops in their architectural design;

(D) have a minimum of two anchor businesses, with a combined gross building area of not less than 150,000 square feet; and

(E) is planned, developed, owned, and managed as a single property;

(2) be located not farther than three miles from an interchange with an eligible urban highway; and

(3) be located with driveway access to the eligible urban highway access road (frontage road), ramp, intersecting crossroad or city street.

(b) Variances.

(1) A person may request a variance from the requirements of the major shopping area guide sign program. A request for a variance will only be considered if the existing requirements preclude participation in the program.

(2) A variance may be requested for wavier of the requirement of:

(A) eligibility;

(B) location of the major shopping area;

(C) placement of the sign; or

(D) type of highway, except the highway must be on the state highway system.

(3) A person may submit a request for a variance to the department's local district engineer indicating:

(A) which requirement of the program it does not meet; and

(B) the variance requested.

(4) The department may require additional documentation following generally accepted engineering standards, which shall include, but not be limited to:

(A) traffic studies;

(B) maps indicating ramps, major arterials, ingress and egress points, existing signs, and distances;

(C) traffic flow analysis including traffic counts to and from the major shopping area;

(D) crash data and analysis;

(E) detailed site plan of the major shopping area, including but not limited to available parking, driveways, and location in reference to eligible urban highways.

(5) The executive director may grant a variance if he or she determines it is feasible to place the sign at the location and the sign meets the requirements of the Texas MUTCD; and

(A) the variance will substantially promote traffic safety;

(B) the variance will substantially improve traffic flow;

(C) an overpass, highway sign, or other highway structure unduly obstructs the visibility of an existing commercial sign; or

(D) the variance is necessary to substantially improve the efficiency and effectiveness of communicating the information needed by people to safely and efficiently use the transportation system.

(6) The executive director will indicate the reason for granting or denying a variance in writing.

(7) A variance will not be granted if the executive director finds that:

(A) a major shopping area is located on an intersecting crossroad or city street whose name can be easily identified with the major shopping area and has existing advance and exit guide signs; or

(B) the major shopping area parking is so insufficient that it causes undue congestion of the roadway system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504933
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: November 17, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 463-8630

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SUBCHAPTER K. MAJOR AGRICULTURAL INTEREST SIGN PROGRAM

43 TAC §§25.700 - 25.708

The Texas Department of Transportation (department) adopts the repeal of Subchapter K, §§25.700 - 25.708, concerning the Major Agricultural Interest Sign Program. The repeals are adopted without changes to the proposal as published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5762) and will not be republished.

EXPLANATION OF ADOPTED REPEALS

Senate Bill 1137, 79th Legislature, Regular Session, 2005, repealed all provision in the Transportation Code regarding the Major Agricultural Interest Sign Program. Under this same bill agricultural entities were incorporated into the Tourist-Oriented Directional Sign Program.

Provisions regarding program eligibility, contract award procedures, program operations and sign specifications are included in the adopted new rules for §§25.400 - 25.409, which are simultaneously being published in this edition of the *Texas Register*.

COMMENTS

No comments on the proposed repeals were received.

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.099 which provides the commission the authority to establish rules for the Tourist-Oriented Sign Program.

CROSS REFERENCE TO STATUTE: Transportation Code 391.099.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 28, 2005.

TRD-200504934
Richard D. Monroe
General Counsel
Texas Department of Transportation
Effective date: November 17, 2005
Proposal publication date: September 9, 2005
For further information, please call: (512) 463-8630

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Youth Commission

Title 37, Part 3

Pursuant to Government Code §2001.039, the Texas Youth Commission files this notice of intent to review and consider for readoption, amendment, or repeal Chapter 81 (Interaction with the Public), Chapter 85 (Admission, Placement, and Program Completion), and Chapter 87 (Treatment).

The commission will determine whether the reasons for adopting the sections under review continue to exist. Any changes to the sections proposed as a result of this rule review will be published in the Proposed Rules section of the *Texas Register*.

Written comments relating to this rule review will be accepted for a 30-day period following publication of this notice in the *Texas Register*. Comments should be directed to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or by email to deanna.lloyd@tyc.state.tx.us.

TRD-200504979
Neil Nichols
General Counsel
Texas Youth Commission
Filed: October 31, 2005

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Adopted Rule Review

Credit Union Department

Title 7, Part 6

The Credit Union Commission has completed the review of Texas Administrative Code Title 7, Chapter 91, §§91.401, relating to purchase, lease or sale of fixed assets; 91.403, relating to federal parity debt cancellation products; 91.406, relating to credit union service contracts; 91.407, relating to electronic notification; and 91.408, relating to user fee for shared electronic terminal. Notice of the proposed review and a request for comments was published in the July 8, 2005, issue of the *Texas Register* (30 TexReg 4017).

The Commission received no comments with respect to these rules. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting 7 TAC §§91.401, 91.403, 91.406, 91.407, and 91.408 continue to exist and readopts these sections without changes, pursuant to the requirements of Government Code, §2001.039.

TRD-200504862
Harold E. Feeney
Commissioner
Credit Union Department
Filed: October 27, 2005

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §102.32(d)

Amount stated in (c)(2)	Amount of Security
$0 - $20,000	$20,000
$20,001 - $25,000	$25,000
$25,001 - $30,000	$30,000
$30,001 - $35,000	$35,000
$35,001 - $40,000	$40,000
$40,001 - $45,000	$45,000
Over $45,000	$50,000

Figure: 10 TAC §80.240(a)(1)

MAXIMUM SPACING FOR DIAGONAL TIES (WIND ZONE I ONLY!)

Minimum Nominal Widths Single/Double Section				
Max. Vertical Distance	**12/24 wide**	**14/28 wide**	**16/32 wide**	**18/36 wide**
20" to 24"	11 ft	14 ft	15 ft	16 ft
25" to 29"	9 ft	12 ft	14 ft	15 ft
30" to 40"	8 ft	10 ft	12 ft	14 ft
41" to 48"	7 ft	9 ft	11 ft	13 ft
49" to 60" (see note 3)	6 ft	8 ft	10 ft	12 ft
61" to 67" (see notes 3 & 10)	5 ft	6 ft	8 ft	10 ft
Minimum number of longitudinal ties, each end of each section.	1 at min. 58° angle from vertical	2 at min. 32° angle from vertical	2 at min. 38° angle from vertical	2 at min. 46° angle from vertical

Notes:

1) This chart applies to single and multi section homes.
2) Anchoring components are rated at 4725 lbs. ultimate load. Anchoring components and equipment shall be installed in accordance with the anchoring component and equipment manufacturer's installation instructions or the generic standards in §80.55(d)(4).
3) Single section units shall have diagonal ties directly opposite each other along the two main I-beams. Multi section units need diagonal ties on the outer-most main I-beam only. When vertical distance exceeds 48", connect diagonal tie to opposite beam.
4) Ties installed at each end of the home shall be within 24 inches of each end of the applicable I-beam.
5) The distance between any two ties may be exceeded to avoid an obstruction, as long as the total number of ties remains the same, and no two anchors shall be within 4 ft of each other. See the table in §80.240(a)(2).
6) Any vertical ties present on homes must be attached to a ground anchor. Both vertical and diagonal ties may be connected to a single double-headed anchor, if the anchor manufacturer's installation instructions allow for the combined loading.
7) The vertical distance is measured from the anchor head to the underside of the floor joists.
8) No two anchors shall be within 4 ft of each other.
9) Other stabilizing systems registered with the Department may replace longitudinal and/or lateral ties as long as the system manufacturer's installation instructions are followed.
10) Piers of greater heights are allowed if they are within limits established in adopted federal standards.

Figure: 10 TAC §80.240(a)(2)

MINIMUM NUMBER OF DIAGONAL TIES REQUIRED PER SIDE, PER UNIT LENGTH (WIND ZONE I ONLY)

	o.c. spacing (ft)												
unit length (ft)	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	**14**	**15**	**16**
40	10	8	7	6	6	5	5	4	4	4	4	3	3
42	11	9	7	6	6	5	5	5	4	4	4	4	3
44	11	9	8	7	6	5	5	5	4	4	4	4	4
46	12	9	8	7	6	5	5	5	5	4	4	4	4
48	12	10	8	7	7	6	5	5	5	4	4	4	4
50	13	10	9	8	7	6	6	5	5	5	4	4	4
52	13	11	9	8	7	6	6	5	5	5	4	4	4
54	14	11	9	8	7	7	6	6	5	5	5	4	4
56	14	11	10	8	8	7	6	6	5	5	5	4	4
58	15	12	10	9	8	7	6	6	6	5	5	5	4
60	15	12	10	9	8	7	7	6	6	5	5	5	5
62	16	13	11	9	8	7	7	6	6	5	5	5	5
64	16	13	11	10	9	8	7	6	6	6	5	5	5
66	17	13	11	10	9	8	7	7	6	6	5	5	5
68	17	14	12	10	9	8	7	7	6	6	6	5	5
70	18	14	12	10	9	8	8	7	7	6	6	5	5
72	18	15	12	11	10	9	8	7	7	6	6	6	5
74	19	15	13	11	10	9	8	7	7	6	6	6	5
76	19	15	13	11	10	9	8	8	7	7	6	6	6

Note: If unit length is not listed use next higher tabulated length.

Figure: 10 TAC §80.240(a)(3)

MAXIMUM SPACING FOR DIAGONAL TIES (WIND ZONE II)
PER SIDE OF THE ASSEMBLED UNIT

Minimum Nominal Widths Single/Double Section				
Max. Vertical Distance	**12/24 wide**	**14/28 wide**	**16/32 wide**	**18/36 wide**
20" to 24"	7 ft	8 ft	8 ft	8 ft
25" to 29"	6 ft	7 ft	8 ft	8 ft
30" to 40"	5 ft	6 ft	7 ft	8 ft
41" to 48"	4 ft	5 ft	6 ft	7 ft
49" to 60" (see note 3)	4 ft	6 ft	6 ft	6 ft
61" to 67" (see notes 3 & 10)	4 ft	4 ft	4 ft	4ft
Minimum number of longitudinal ties, each end of each section.	2 at min. 58° angle from vertical	2 at min. 32° angle from vertical	3 at min. 38° angle from vertical	3 at min. 46° angle from vertical

Notes:

1) This chart applies to single and multi section homes.
2) Anchor components are rated at 4725 lbs. ultimate load.
3) Single section units shall have diagonal ties directly opposite each other along the two main I-beams. Multi section units need diagonal ties on the outer-most main I-beam only. When vertical distance exceeds 48", connect diagonal tie to opposite beam.
4) Ties installed at each end of the home shall be within 24 inches of each end of the applicable I-beam.
5) The distance between any two ties may be exceeded to avoid an obstruction, as long as the total number of ties remains the same, and no two anchors shall be within 4 ft of each other. See the table in §80.240(a)(2).
6) Any vertical ties present on homes must be attached to a ground anchor. Both vertical and diagonal ties may be connected to a single double-headed anchor, if the anchor manufacturer's installation instructions allow for the combined loading.
7) The vertical distance is measured from the anchor head to the underside of the floor joists.
8) No two anchors shall be within 4 ft of each other.
9) Other stabilizing systems registered with the Department may replace longitudinal and/or lateral ties as long as the system manufacturer's installation instructions are followed.
10) Piers of greater heights are allowed if they are within limits established in adopted federal standards.

Figure: 10 TAC §80.240(a)(4)

MAXIMUM CENTERLINE WALL OPENING FOR COLUMN UPLIFT BRACKETS

	---Maximum opening based on floor widths---			
	12 Wide (140"max)	14 Wide (164"max.)	16 Wide (186" max.)	18 Wide (210" max.)
One Single Bracket (2-lags) either side of column.	17'-6"	15'-0"	13'-3"	11'-9"
Two Single Brackets (2-lags each), one each side of column.	35'-0"	30'-0"	26'-6"	23'-6"
One Double Bracket (4-lags) either side of column. Spans are on both sections, opposite each other.	31'-9"	27'-2"	23'-11"	21'-2"
*Two Double Brackets (4-lags) either side of column. Spans are on both sections, opposite each other.	40'-0"	40'-0"	40'-0"	40'-0"
For openings larger than 40'-0", consult a local licensed professional engineer or architect.				

Figure: 10 TAC §80.240(a)(5)

Floor Connections - Wind Zone I and II

	min 5/16 lag screw	# 10 wood screw
Wind Zone I	max. 36"	max. 24"
Wind Zone II	max. 24"	max. 12"

Figure: 10 TAC §80.240(a)(6)

Roof Connection - Fastener Type and Spacing:

	---------- maximum o.c. spacing (in) ----------		
	3/8 Lag	1/4 Lag	#10 wood screw
Wind Zone I	36"	24"	24"
Wind Zone II	20"	16"	12"

Figure: 10 TAC §80.240(a)(7)

MAIN PANEL BOX FEEDER CONDUCTOR SIZES

Main Breaker size (amps)	Raceway diameter	Red/Black (power)	White (neutral)	Green (grounding)
50	1	#6	#6	#8
100	1 1/4	#2 or #3	#2 or #3	#6
150	1 ½	#1/0 or #2/0	#2	#6
200	2	#3/0	#2	#6

Figure: 10 TAC §80.240(a)(8)

FOOTER CAPACITIES (LBS)

Footer size	Soil Bearing Capacity 1000psf	1500psf	2000psf	2500psf	3000psf	3500psf	4000psf
16x16x4	1700	2700	3500	4400	5300	6100	7000
20x20x4	2700	4100	5500	6900	8300	9400	11000
16x32x4	3500	5200	6800	8600	10400	12000	14000
24x24x4	4000	6000	8000	10000	12000	14000	16000

Notes:

1) 8x16x4 footers may be used for perimeter and/or exterior door supports. Capacity is half that of the tabulated values for a 16x16x4 footer. For double 8x16x4 footers use the 16x16x4 row.
2) Footers of material other than concrete may be used if registered with the Department and the listed capacity and area is equal to or greater than the footer it replaces. Concrete footers of sizes not listed may be used as long as their size is equal to or greater than the size listed.
3) Footers with loads greater than 8,000 lbs. require a double stacked pier.
4) All poured concrete is minimum 2500 psi at 28 days.
5) Actual footer dimensions may be 3/8 inch less than the nominal dimensions for solid concrete footers conforming to the specifications in ASTM C90-99a, Standard Specification for Load bearing Concrete Masonry Units.

Figure: 10 TAC §80.240(a)(9)

PIER LOADS (LBS) AT TABULATED SPACINGS (WITHOUT PERIMETER SUPPORTS)

Unit Width(ft)	maximum pier spacing 4 ft o.c.	5 ft o.c.	6 ft o.c.	7 ft o.c.	8 ft o.c.
12 Wide	1725	2150	2600	3000	3400
14 wide	2000	2500	3000	3500	4000
16 Wide	2350	2900	3500	4100	4700

Note: 18 ft. wides require perimeter support per the table in §80.240(a)(10).

Example: Determine maximum pier spacing for a 16 ft. wide x 76 ft. long single section with a soil bearing capacity of 1500 psf. Footer size to be used is a single 16x16x4 precast concrete footer.

Step 1: In the table in §80.240(a)(8) look up the maximum load for a single 16x16x4 pad set on 1500 psf soil. Answer = 2700 psf

Step 2: In the table in §80.240(a)(9) in the column for 16 ft. wide, find the on-center spacing (o.c.) load equal to or less than the footer capacity of 2700 lbs found in the table in §80.240(a)(8).

Answer: The 4ft column shows minimum capacity of 2350 lbs. Therefore, for a 16 ft. wide and a soil bearing capacity of 1500 psf using 16x16x4 footers the maximum pier spacing is 4 ft. o.c.

Figure: 10 TAC §80.240(a)(10)

PIER LOADS (LBS) AT TABULATED SPACINGS (WITH PERIMETER SUPPORTS)

---------- maximum I-Beam pier spacing ----------

Unit width (ft)	4 ft o.c.	6 ft o.c.	8 ft o.c.	10 ft o.c.	12 ft o.c.
12 Wide	750	1150	1500	1900	2300
14 Wide	1050	1600	2100	2600	3100
16 Wide	1200	1800	2400	3000	3600
18 Wide	1450	2150	2850	3600	4300

Note: Maximum I-Beam pier spacing is 8 ft. o.c. for 8" I-Beam, 10 ft. o.c. for 10" I-Beam and 12 ft. o.c. for 12" I-Beam or the resultant maximum spacing based on soil bearing and footer size per the table in §80.240(a)(8), whichever is less.

---------- maximum perimeter pier spacing ----------

Unit width (ft)	4 ft o.c.	5 ft o.c.	6 ft o.c.	7 ft o.c.	8 ft o.c.
12 Wide	1000	1200	1500	1700	1900
14 Wide	1100	1400	1650	1900	2200
16 Wide	1300	1600	1900	2250	2500
18 Wide	1600	2000	2300	2700	3000

Example: Determine maximum I-Beam pier spacing for a 16 ft. wide with 12" I-Beam, perimeter support and 1500 psf soil bearing capacity.

Step 1: From the table in §80.240(a)(8), the maximum load for a 16x16x4 at 1500 psf soil is 2700 lbs.

Step 2: From the table in §80.240(a)(10), the I-Beam pier load @ 10 ft. o.c. is 3000 lbs ==> no good, the I-Beam pier load @ 8 ft. o.c. is 2400 lbs ==> ok

I-Beam pier spacing is at 8 ft. o.c.

Step 3: The perimeter pier load @ 8ft. o.c. is 2500 lbs ==> ok

Perimeter pier spacing is at 8 ft. o.c.

Figure: 10 TAC §80.240(a)(11)

MATING LINE COLUMN LOADS (LBS)

Span in feet	----------Unit width in feet (nominal)---------- 12 Wide	14 Wide	16 Wide
4	720	840	960
6	1080	1260	1440
8	1440	1680	1920
10	1800	2100	2400
12	2160	2520	2880
14	2520	2940	3360
16	2880	3360	3840
18	3240	3780	4320
20	3600	4200	4800
22	3960	4620	5280
24	4320	5040	5760
26	4680	5460	6240
28	5040	5880	6720
30	5400	6300	7200
32	5760	6720	7680
34	6120	7140	8160
36	6480	7560	8640
Note: If actual span is not shown use next higher tabulated span.			

Figure: 10 TAC §80.240(a)(12)

Enforcement Matrix

Nature of Violation	Range of Recommended Actions
1st time--no dangerous conditions or loss to consumers--addressed promptly	1st time violator letter
1st time--no dangerous conditions or loss to consumers--not addressed promptly	Up to $250 fine
1st time--danger to consumer and/or significant loss to consumer--addressed promptly	Up to $500 fine
1st time--danger to consumer and/or significant loss to consumer--not addressed promptly	$500-1000 fine
Recurring--no dangerous conditions or loss to consumers--addressed promptly	Up to $250 fine for 1st recurrence; up to $500 for 2nd recurrence, up to $1000 PLUS a written plan to prevent additional violations for 3rd recurrence
Recurring--no dangerous conditions or loss to consumers--not addressed promptly	Up to $500 fine for 1st recurrence; up to $1000 for 2nd recurrence, up to $1000 and/or seek suspension for 3rd recurrence
Recurring--danger to consumer and/or significant loss to consumer--addressed promptly	$500 -1000 for first recurrence; seek suspension (may be probated) for 2nd recurrence; revocation for 3rd recurrence
Recurring--danger to consumer and/or significant loss to consumer--not addressed promptly	Up to maximum allowed by law for 1st recurrence; seek suspension (may be probated) for 2nd recurrence; revocation for 3rd recurrence

Figure: 10 TAC §80.240(b)(1)

Counties Located in Wind Zone II

The following counties in Texas are considered to be in Wind Zone II (100 mph):

(1) Aransas
(2) Brazoria
(3) Calhoun
(4) Cameron
(5) Chambers
(6) Galveston
(7) Jefferson
(8) Kenedy
(9) Kleberg
(10) Matagorda
(11) Nueces
(12) Orange
(13) Refugio
(14) San Patricio
(15) Willacy

All other counties are in Wind Zone I.

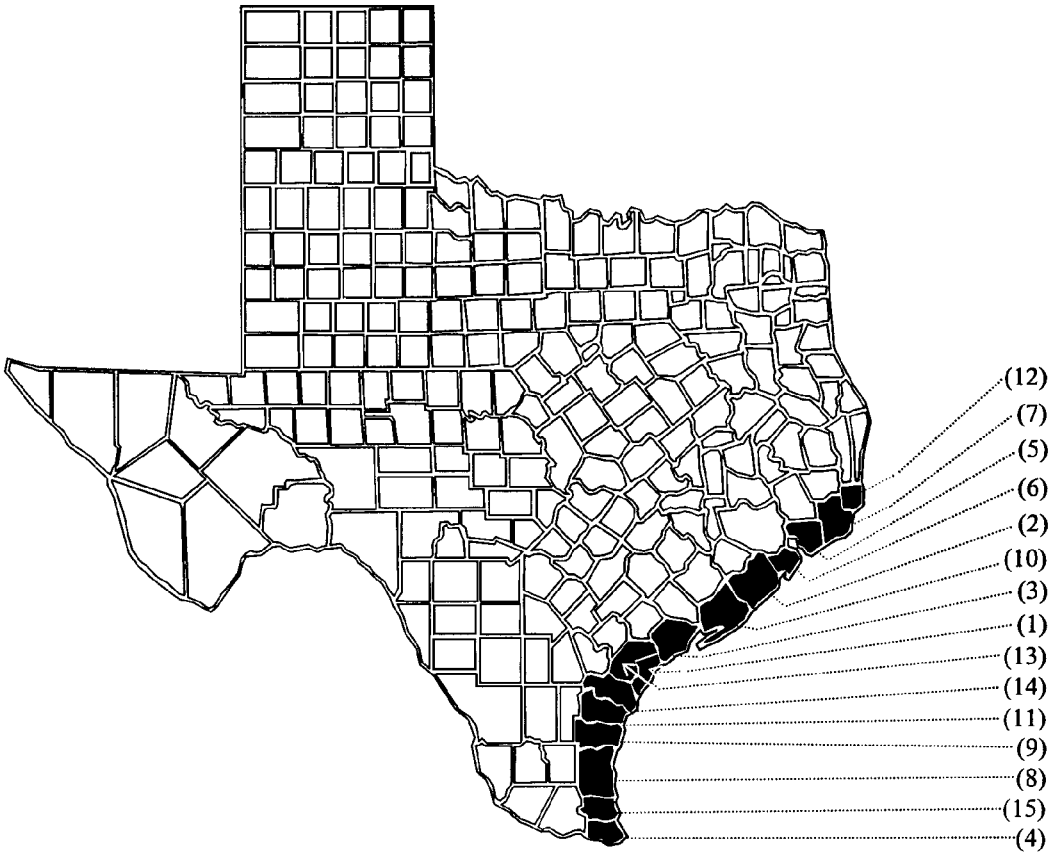


Figure: 10 TAC §80.240(b)(2)

ANCHOR INSTALLATION

Notes:

1) Anchor head must be not more than 1 inch from the ground at insertion point.
2) Anchor head may be inset a maximum of 6 inches from the vertical outer edge of the floor framing to allow for skirting installation.

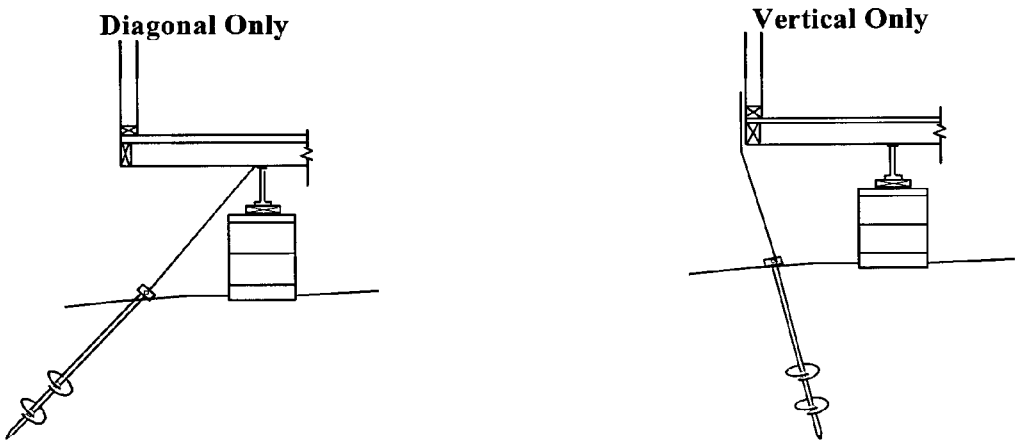
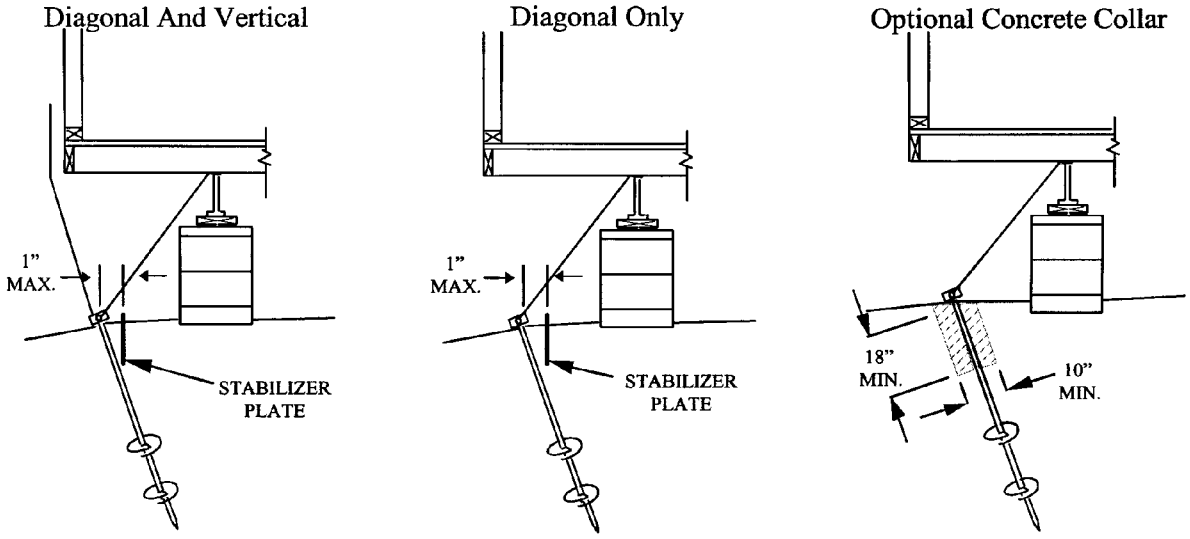


Figure: 10 TAC §80.240(b)(3)

PLACEMENT OF STABILIZING DEVICES



Notes:

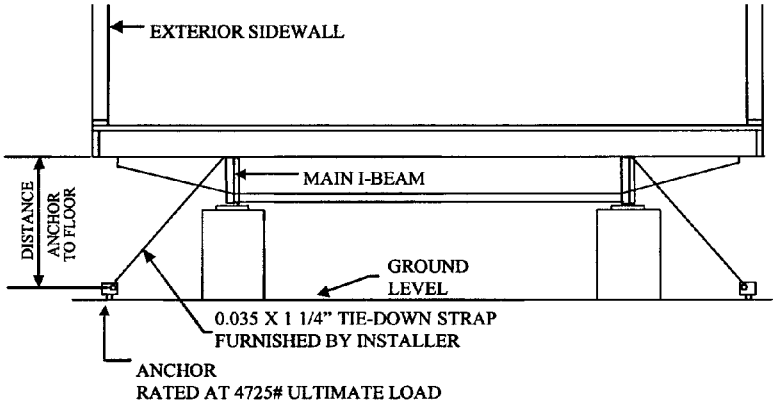
1) Stabilizer plate may be replaced with a concrete collar that is at least 18 inches deep and 10 inches in diameter or other approved devices.
2) Diagonal tie must depart from the top of the I-Beam as shown.
3) The top of the stabilizer plate must be within 1 inch of the anchor shaft.
4) Stabilizer plates and other approved devices must be installed in accordance with the product manufacturer's instructions.

Figure: 10 TAC §80.240(b)(4)

WIND ZONE I – SINGLE/MULTI-SECTION INSTALLATION

(Refer to other figures for depictions of proper anchor and stabilizer device installation.)

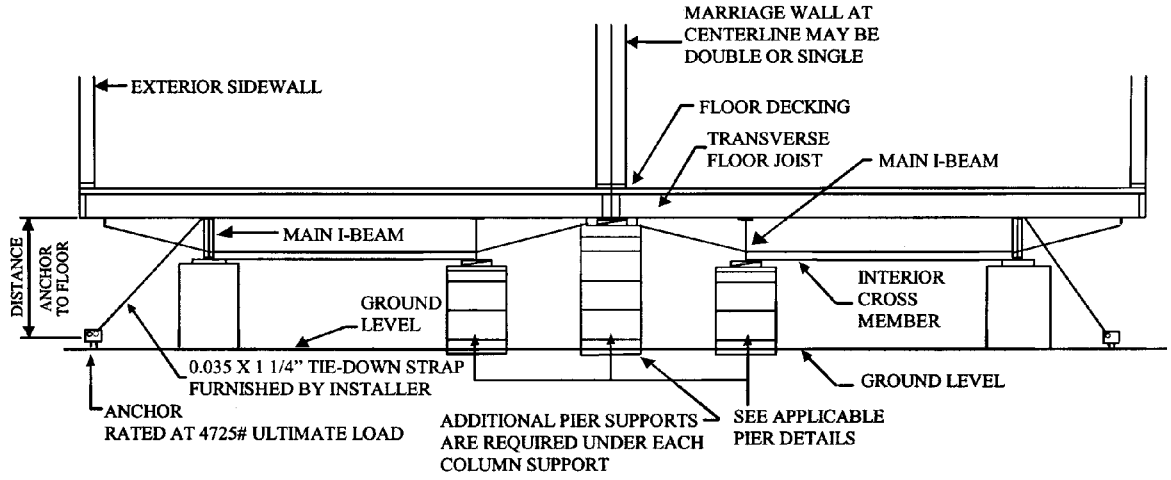
Figure 1: Single Section



Notes:

1) Single section units require diagonal ties to be directly opposite each other.
2) All existing vertical ties must be connected to a ground anchor.
3) Diagonal tie spacing per the table in §80.240(a)(1) or §80.55(d)(4). Vertical distance in this table refers to the distance of the anchor head to the underside of the floor joists as shown above.
4) Diagonal tie must depart from the top of the I-Beam as shown.

Figure 2: Multi-Section



Notes:

1) Multi-section units require diagonal ties on the outer main I-Beams only.
2) Diagonal ties need not be directly opposite each other.
3) Diagonal tie spacing per the table in §80.240(a)(1) or §80.55(d)(4). Vertical distance in this table refers to the distance of the anchor head to the underside of the floor joists as shown above.
4) Existing vertical ties must be connected to a ground anchor.
5) Diagonal tie must depart from the top of the I-Beam as shown.

Figure: 10 TAC §80.240(b)(5)

DIAGONAL STRAP PLACEMENT FOR PIERS EXCEEDING 36 INCHES IN HEIGHT

(Refer to other figures for depiction of proper anchor and stabilizer device installation.)

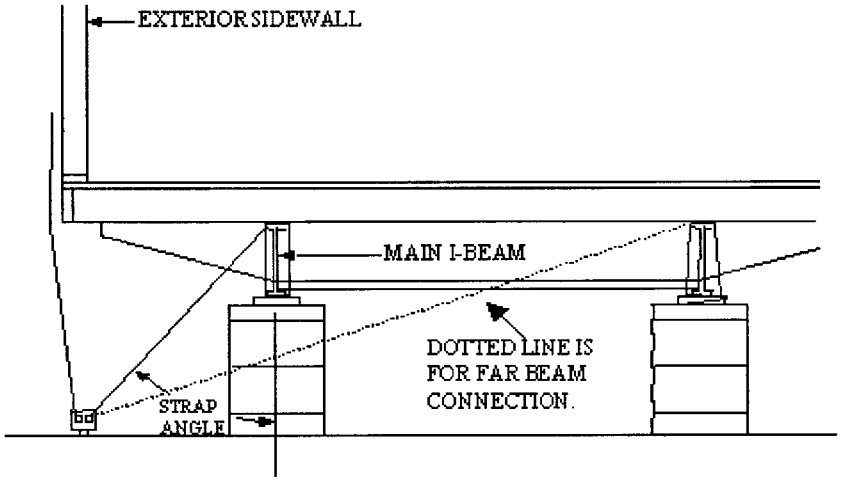


Figure: 10 TAC §80.240(b)(6)

DIAGONAL AND VERTICAL TIES

(Refer to other figures for depiction of proper anchor and stabilizer device installation.)

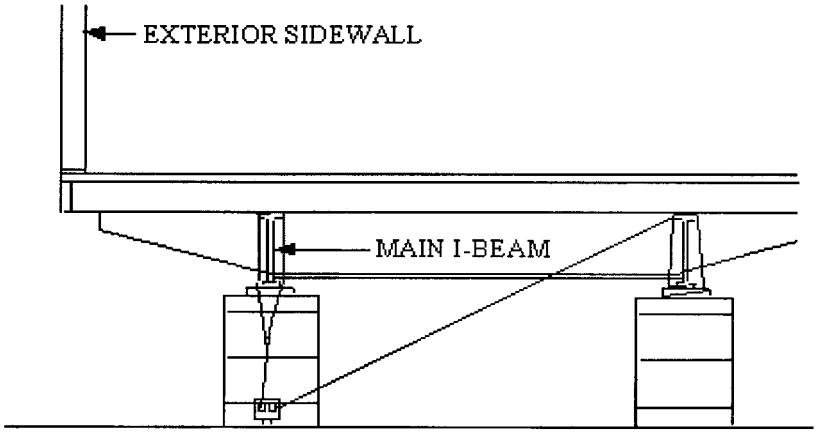
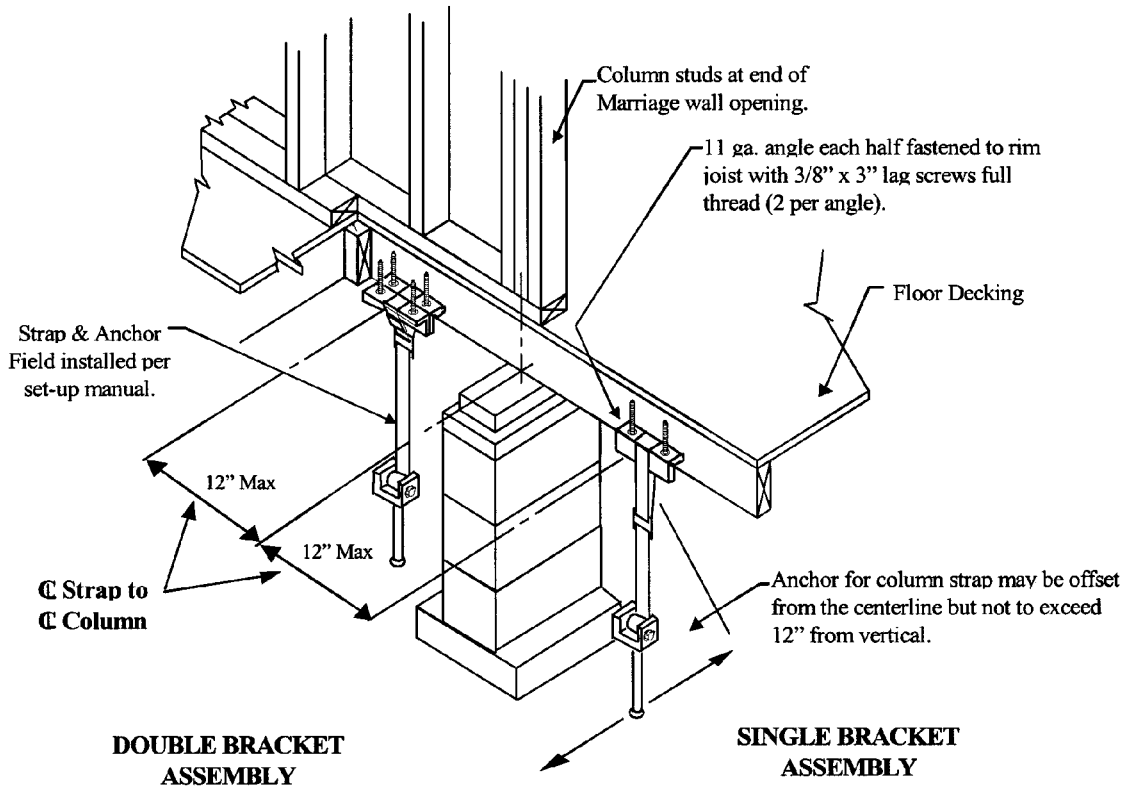


Figure: 10 TAC §80.240(b)(7)

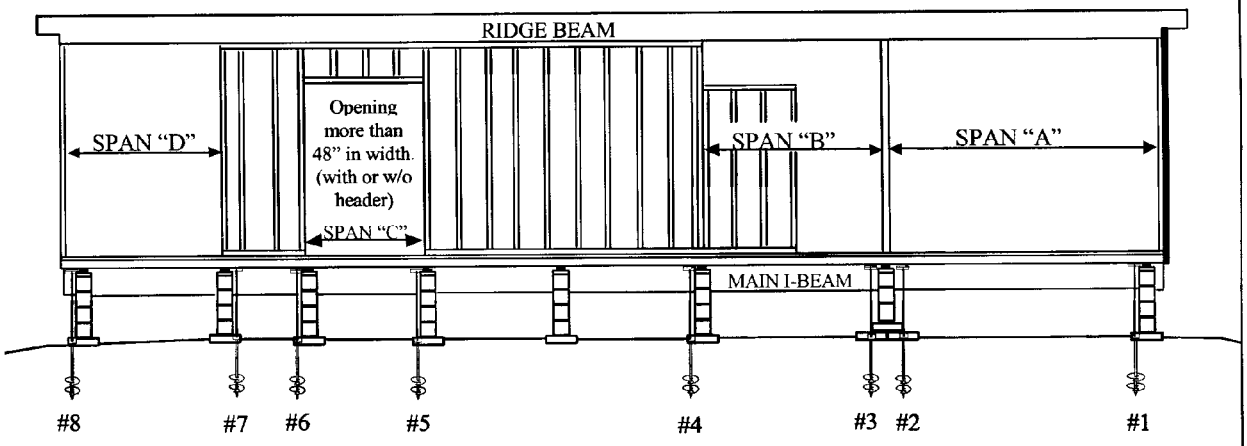
TYPICAL INSTALLATION DETAILS



Note: Anchors, straps, buckles and crimps shown are for illustration purposes only. All components used must be registered with the Department.

Figure: 10 TAC §80.240(b)(8)

ANCHOR SPAN



Determine type and number of brackets needed at each opening.

Anchor #1: From the table in §80.240(a)(4), row 3 in the 14 ft. wide column, the maximum span for this condition is 27'-2". Actual span is 18'-0" ====> one double bracket is ok.

Anchor #2 & #3: Since the wall between spans "A" and "B" is less than 16 inches in width the two spans must be added together to determine number and type of brackets.
Span "A" (18'-0") + Span "B" (14'-8") = 32'-8"
From the table in §80.240(a)(4), row 3 in the 14 ft. wide column, the maximum span for one double bracket is 27'-2". Actual span is 32'-8" ====> two double brackets required.

Anchor #4: Span "B" is on both sections @ 14'-8". From the table in §80.240(a)(4), row 3 in the 14 ft. wide column, the maximum span for one double bracket is 27'-2" ====> ok

Anchor #5: Same as anchor # 4, except for 6'-8" span.

Anchor #6 & #7: This span is on one section only. Therefore a single bracket may be used. From the table in §80.240(a)(4), row 1 in the 14 ft. wide column, the maximum span for a single bracket is 15'-0". Actual span is 13'-8" ====> single bracket is ok.

Figure: 10 TAC §80.240(b)(9)

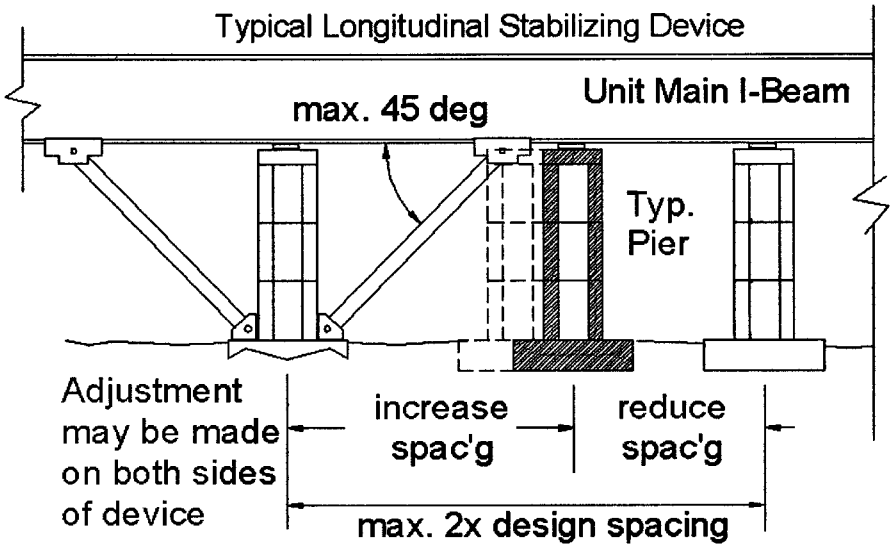


Figure: 10 TAC §80.240(b)(10)

LONGITUDINAL TIES

Figure 1

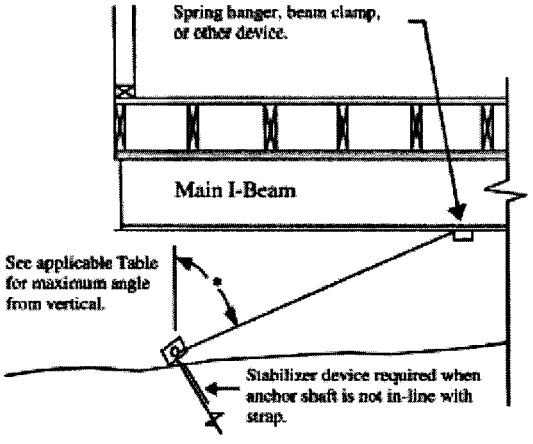


Figure 1: Connection to existing spring hangers, factory installed or site installed beam clamps.

Figure 2

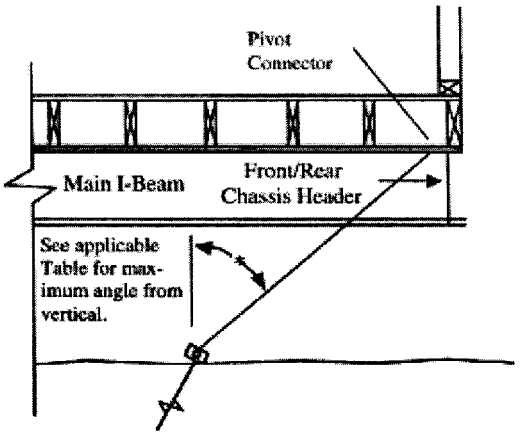


Figure 2: Connection to front or rear chassis headers. Strap must be installed within 12" of where the header member connects to the main I-beam.

Figure: 10 TAC §80.240(b)(11)

MATING LINE SURFACES

Mating line surfaces are along the floor, up the front and rear endwalls and along the ceiling line.

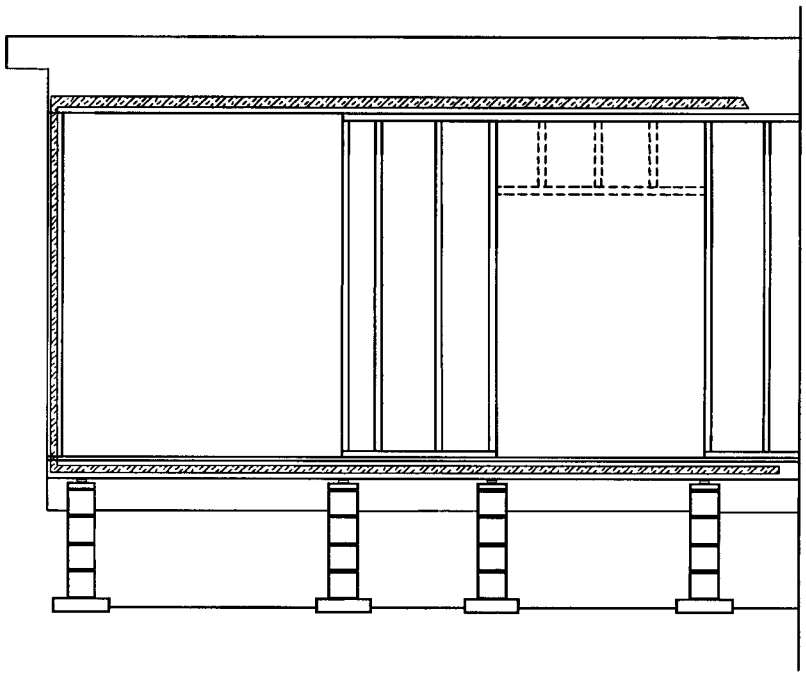


Figure: 10 TAC §80.240(b)(12)

FLOOR CONNECTIONS

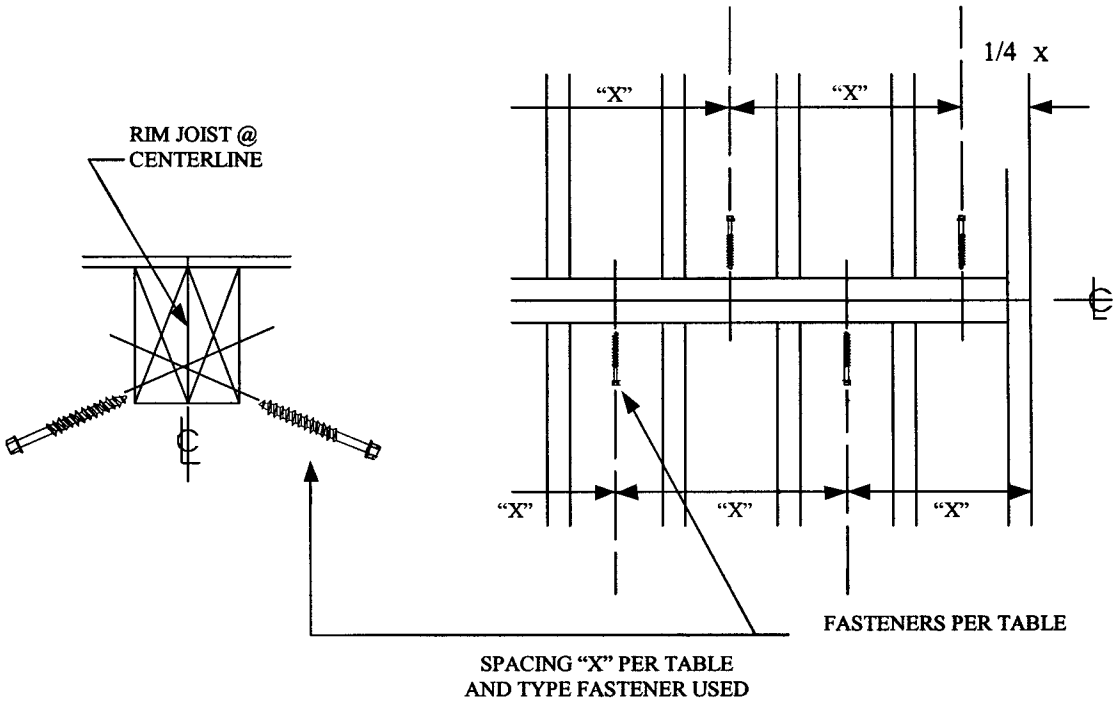


Figure: 10 TAC §80.240(b)(13)

ENDWALL CONNECTIONS

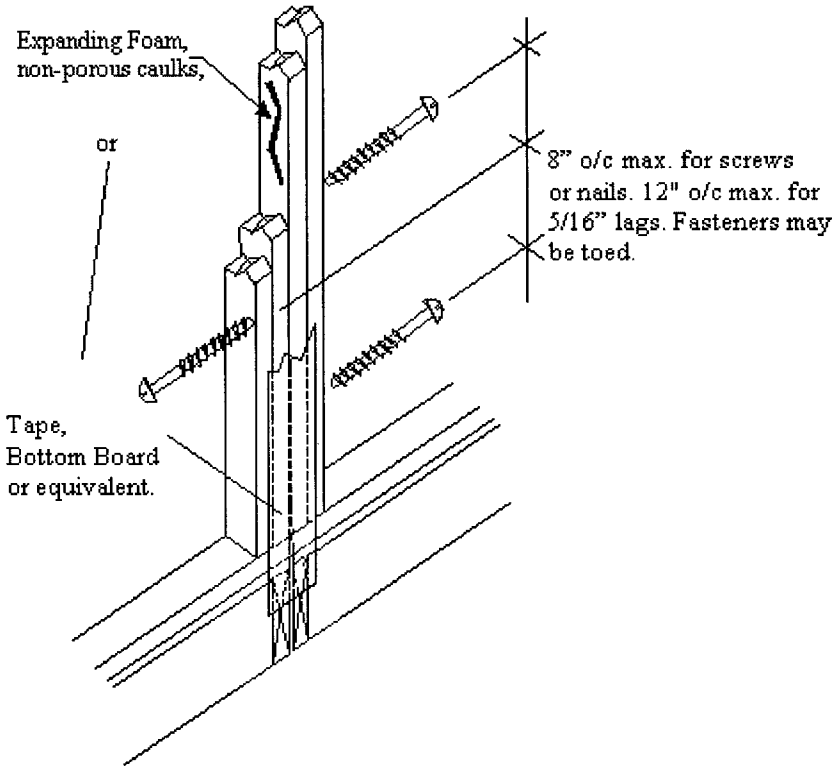


Figure: 10 TAC §80.240(b)(14)

ROOF CONNECTION

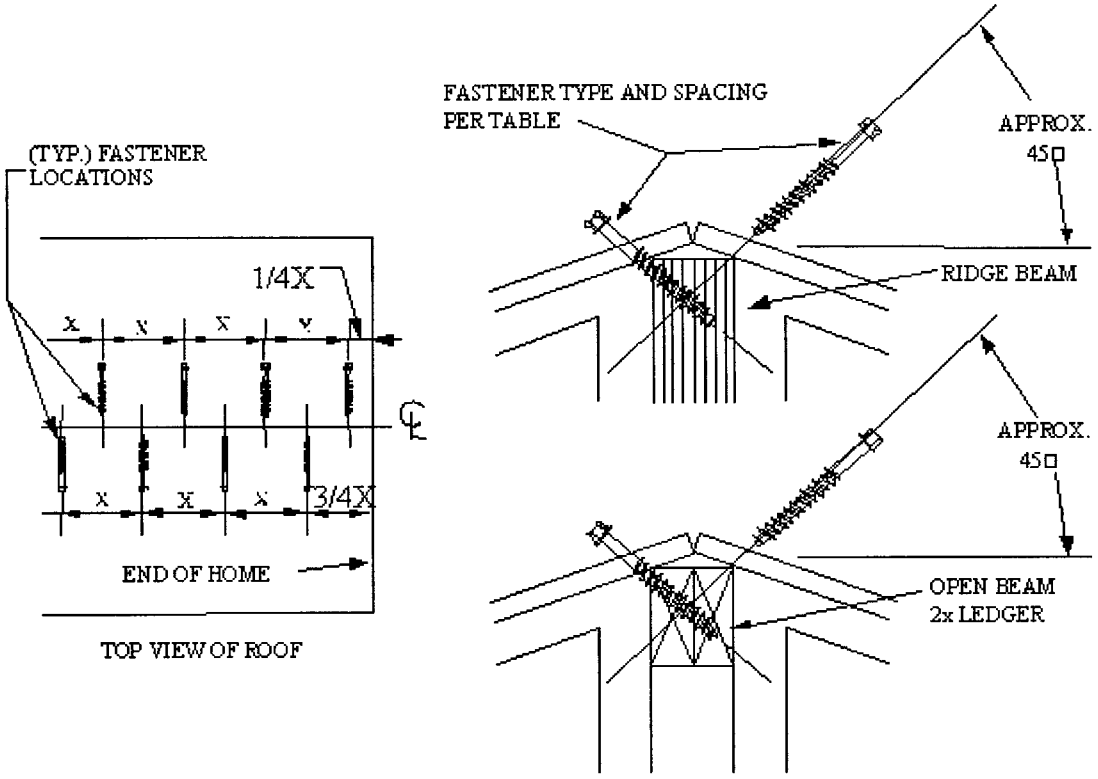


Figure: 10 TAC §80.240(b)(15)

EXTERIOR ROOF CLOSE UP

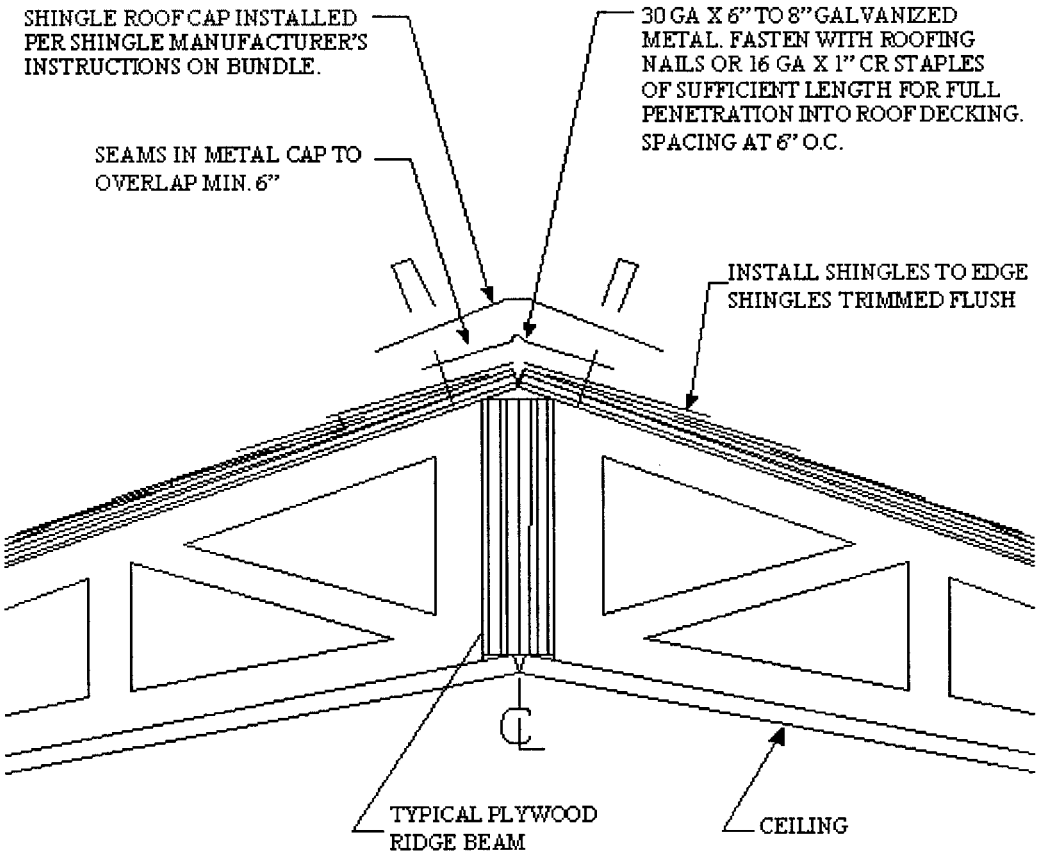
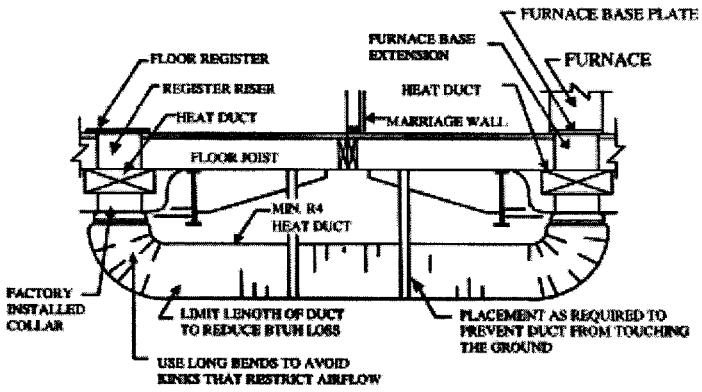


Figure: 10 TAC §80.240(b)(16)

HVAC (HEAT/COOLING) DUCT CROSSOVER



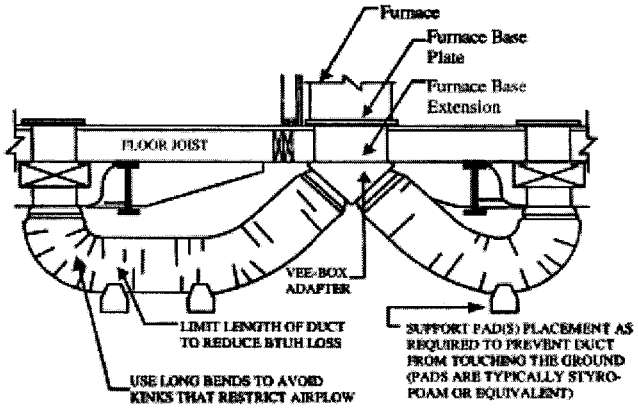
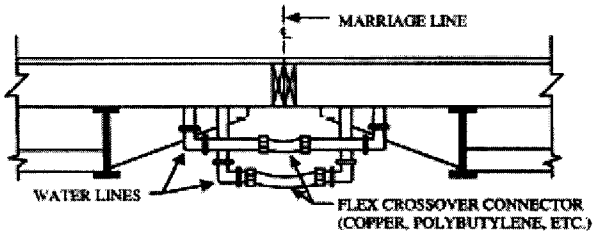


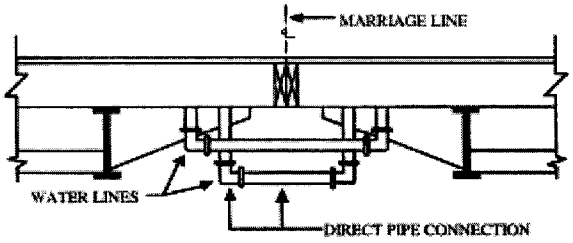
Figure: 10 TAC §80.240(b)(17)

MULTI-SECTION WATER CROSSOVER CONNECTIONS

METHOD A



METHOD B



METHOD C

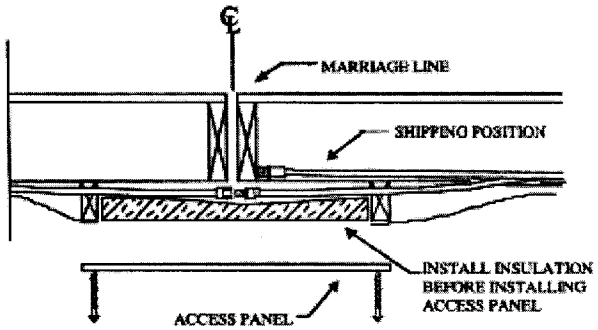


Figure: 10 TAC §80.240(b)(18)

DRAIN, WASTE AND VENT FLOOR PIPING SYSTEM

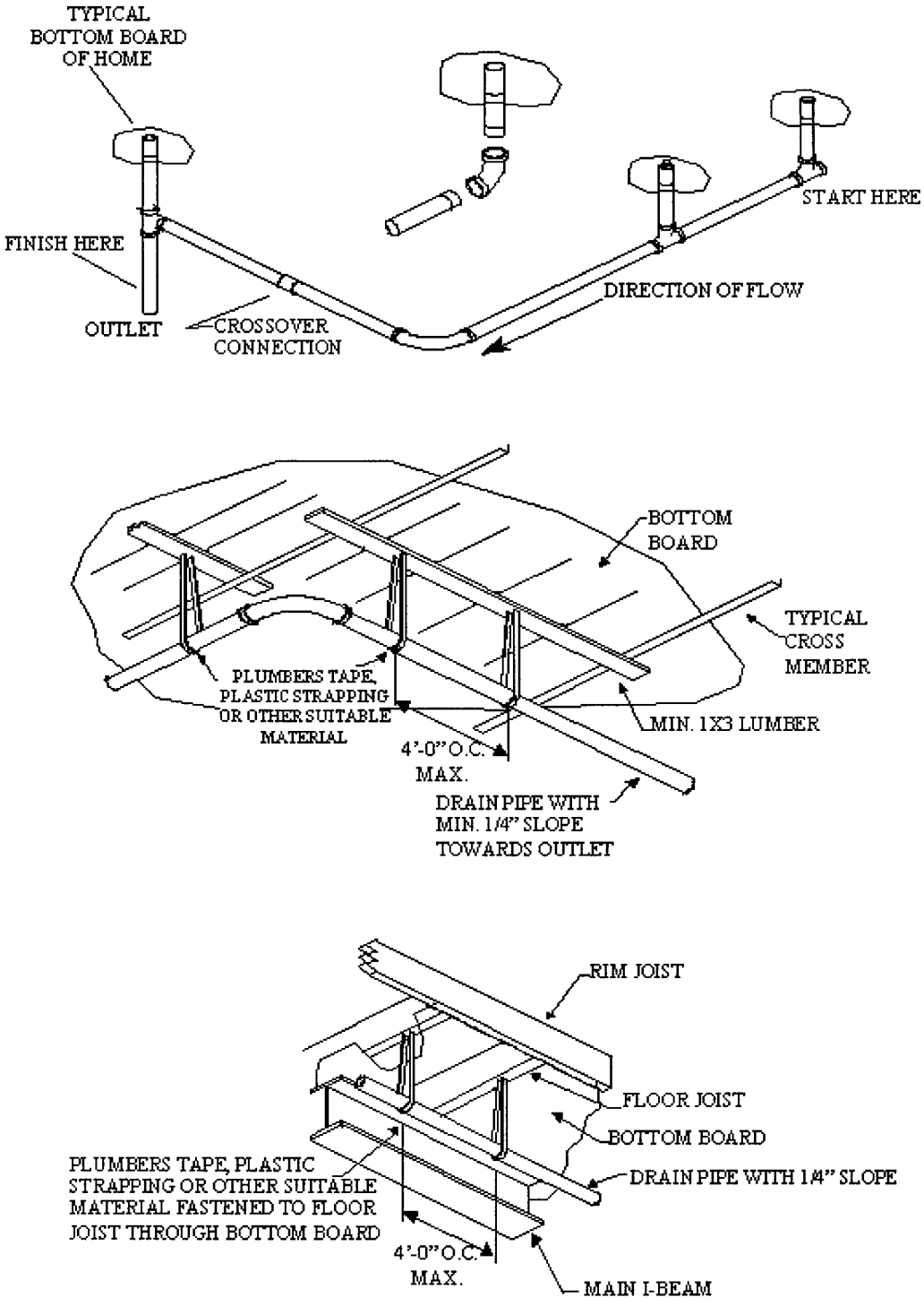
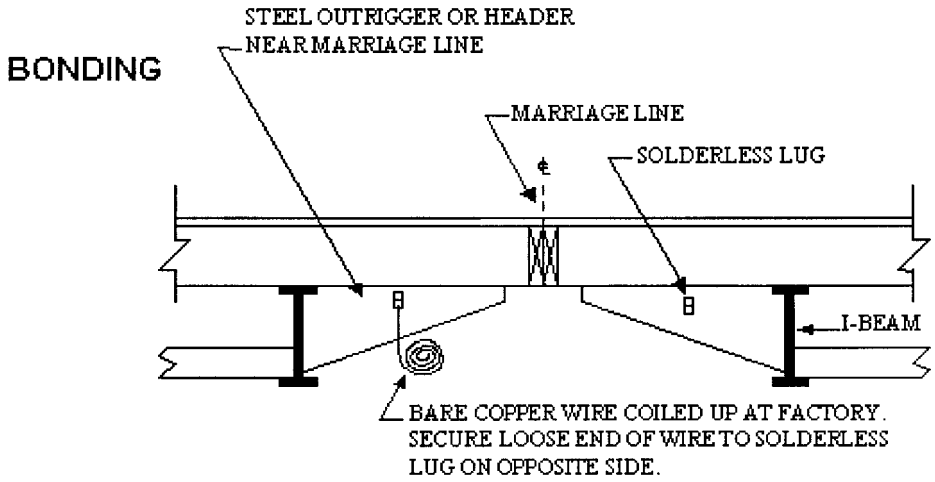


Figure: 10 TAC §80.240(b)(19)

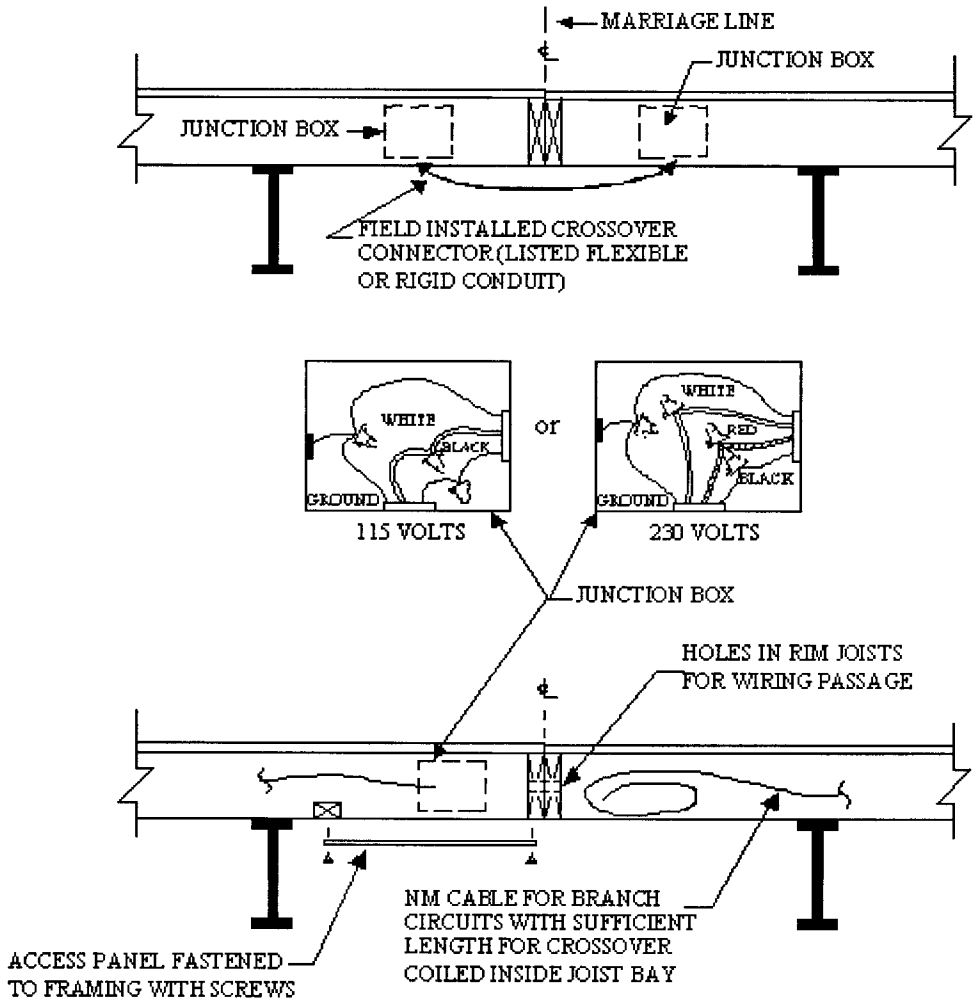
CHASSIS BONDING



NOTE:
A 4" BONDING STRAP MAY BE USED INSTEAD OF COPPER WIRE BY ATTACHING THE STRAP TO BOTH UNITS WITH 2-#8X3/4" SELF-TAPPING METAL SCREWS ON EACH SIDE.

Figure: 10 TAC §80.240(b)(20)

ELECTRICAL CROSSOVER

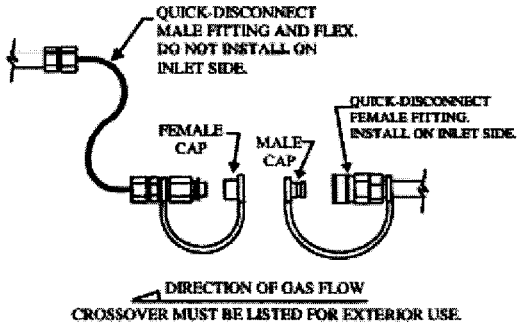


NOTE:
ANY EXPOSED NM CABLE MUST BE PROTECTED BY CONDUIT AND INSTALLED IN ACCORDANCE WITH THE N.E.C.

Figure: 10 TAC §80.240(b)(21)

FUEL GAS PIPE CROSSOVER CONNECTIONS

Method A



Method B

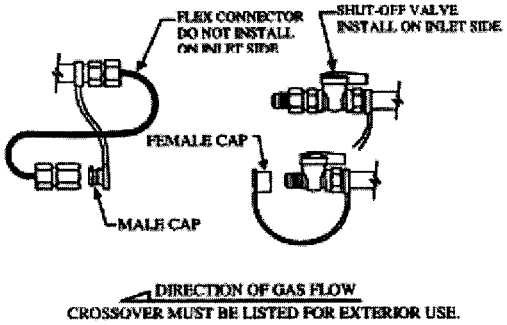
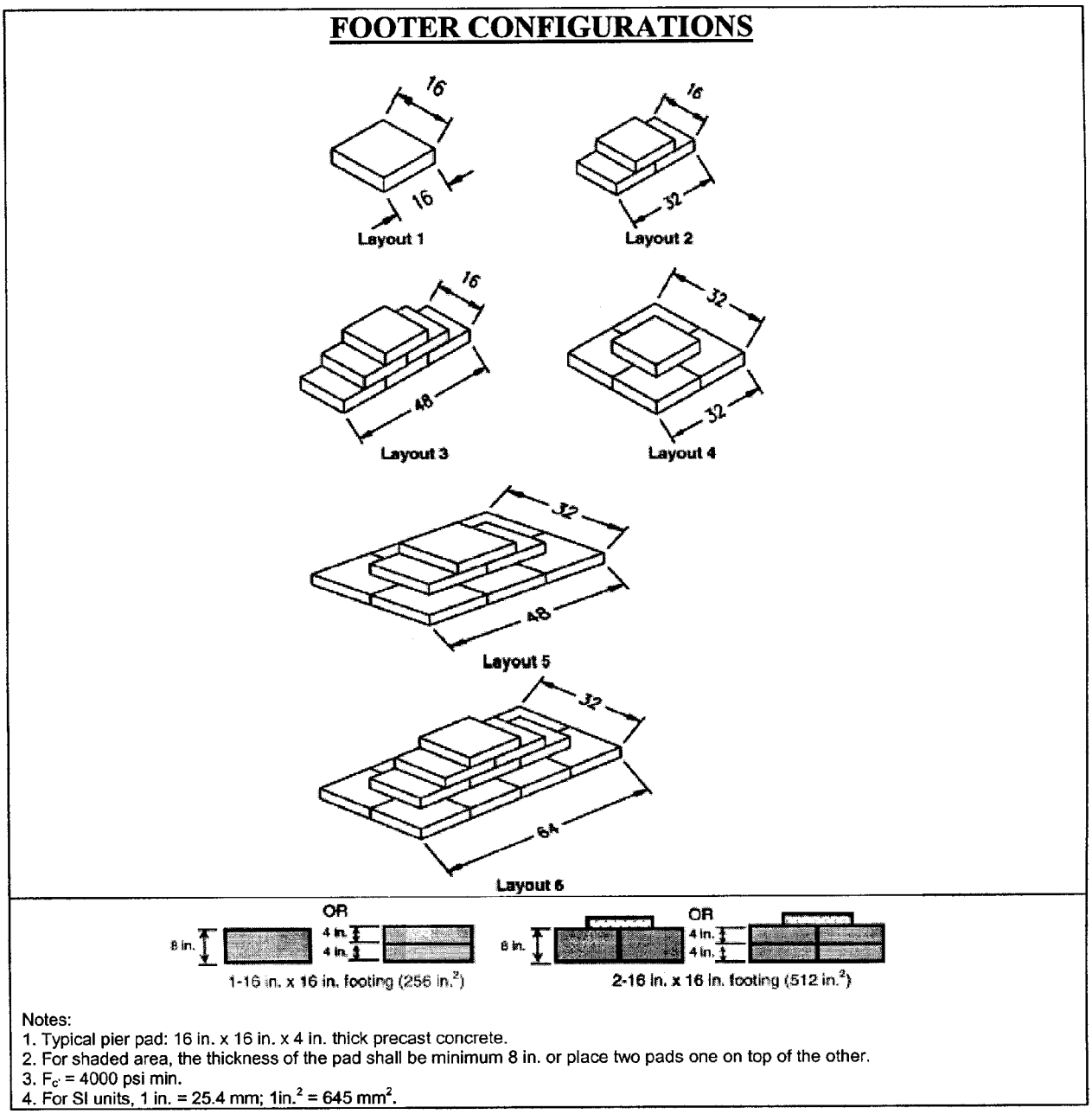


Figure: 10 TAC §80.240(b)(22)

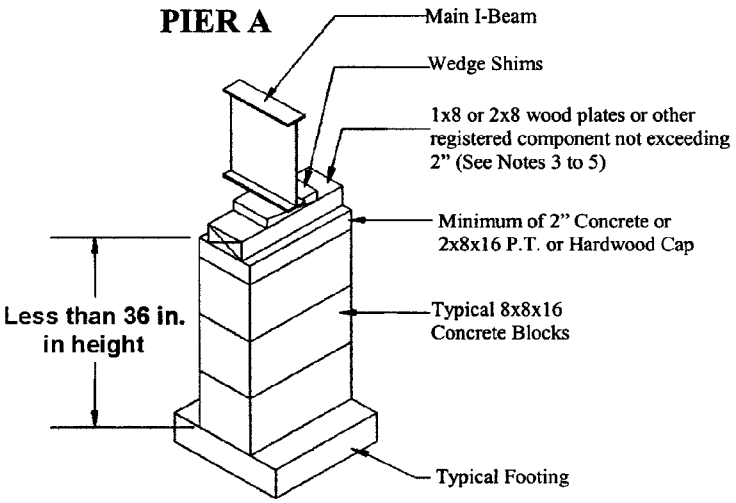


Notes:
1. Typical pier pad: 16 in. x 16 in. x 4 in. thick precast concrete.
2. For shaded area, the thickness of the pad shall be minimum 8 in. or place two pads one on top of the other.
3. $F_{c'}$ = 4000 psi min.
4. For SI units, 1 in. = 25.4 mm; $1in.^2 = 645\ mm^2$.

Figure: 10 TAC §80.240(b)(23)

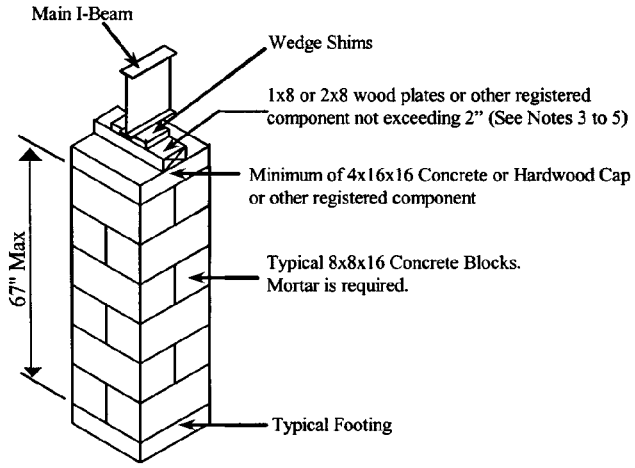
PIER DESIGN (SINGLE & MULTI-SECTION STACK)

PIER A



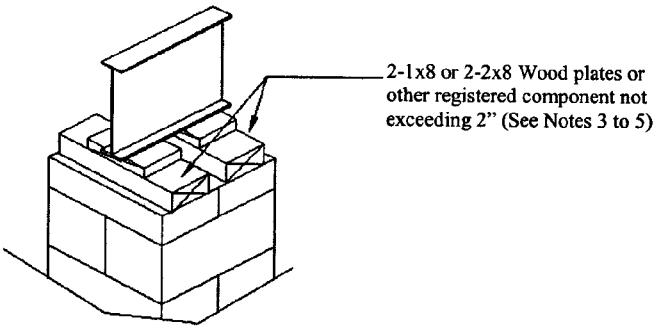
Pier A: Single stack of solid or open cell, 8x8x16 concrete blocks. Maximum height is 36 inches as measured from the top of the footer to the top of the last concrete block. Concrete blocks are installed with their lengths perpendicular to the main I-Beam. Open cells must be vertical and in alignment.

Pier B



Pier B: Interlocked double stack of solid or open cell 8x8x16 concrete blocks. The maximum height is 67 inches as measured from the top of the footer to the top of the last concrete block. Piers of greater heights are allowed if they are within limits established in adopted federal standards. The pier is capped with a minimum 16x16x4 concrete cap. Open cells must be vertical and in alignment. Each course of open cell blocks must be perpendicular to the previous course.

Pier B-1

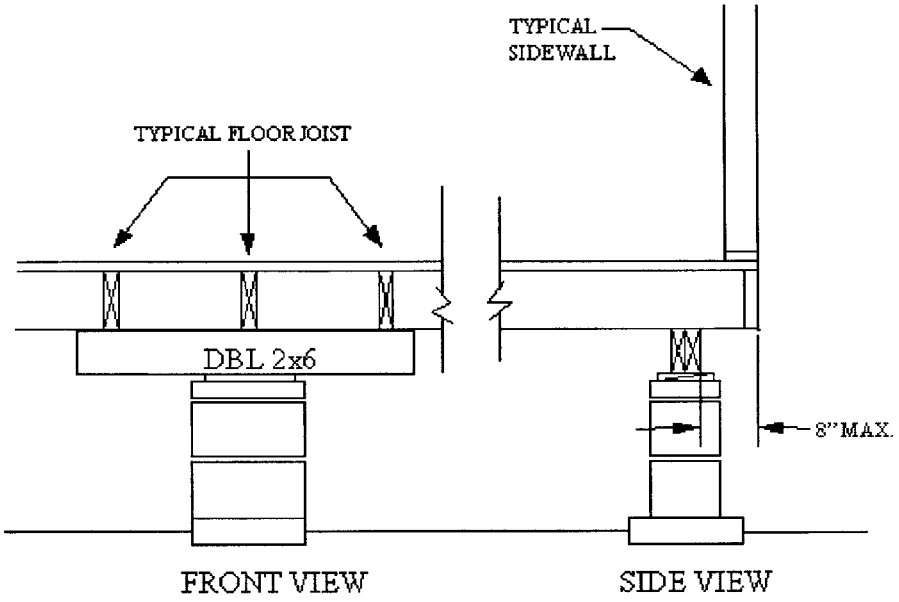


Note:

1) Open cell and solid concrete blocks shall meet ASTM-C90-99a, Standard Specification for Load bearing Concrete Masonry Units.
2) Support system components are to be undamaged and installed in a manner to accomplish the purpose intended.
3) Either wood caps or shims must be used between I-Beam and concrete.
4) Preservation treated (PT) wood components shall conform to the applicable standards issued by the American Wood Preserver's Association and referenced by the latest edition of the International Residential Code.
5) When concrete caps are used, wood plates or other registered components are required. When wood caps are used, wood plates shall not be used.

Figure: 10 TAC §80.240(b)(24)

PERIMETER PIER FRONT & SIDE VIEW



Notes:

1) Perimeter pier may be inset from edge of floor up to 8". The 2x6 brace may be omitted if the front face of a perimeter pier is flush with the perimeter joist and the perimeter pier supports the intersection of an interior joist and perimeter joist.
2) Dbl 2x6 are min. #3 Yellow Pine or pressure treated Spruce-Pine, nailed together with min. 16d galvanized nails 2-rows at maximum 8" o.c.
3) 2x6 brace must span at least two (2) but not more than three (3) floor joists.

Figure: 10 TAC §80.240(b)(25)

TYPICAL MULTI-SECTION PIER LAYOUT

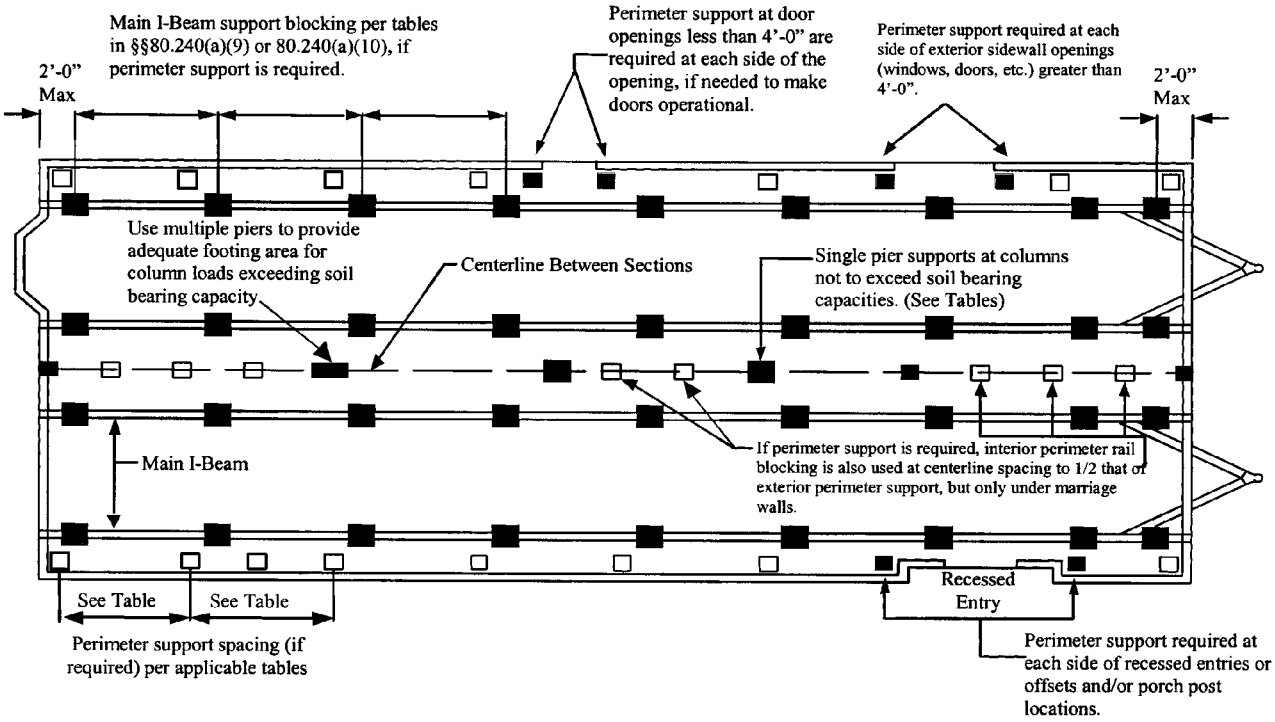


Figure: 10 TAC §80.240(b)(26)

TYPICAL SINGLE SECTION PIER LAYOUT

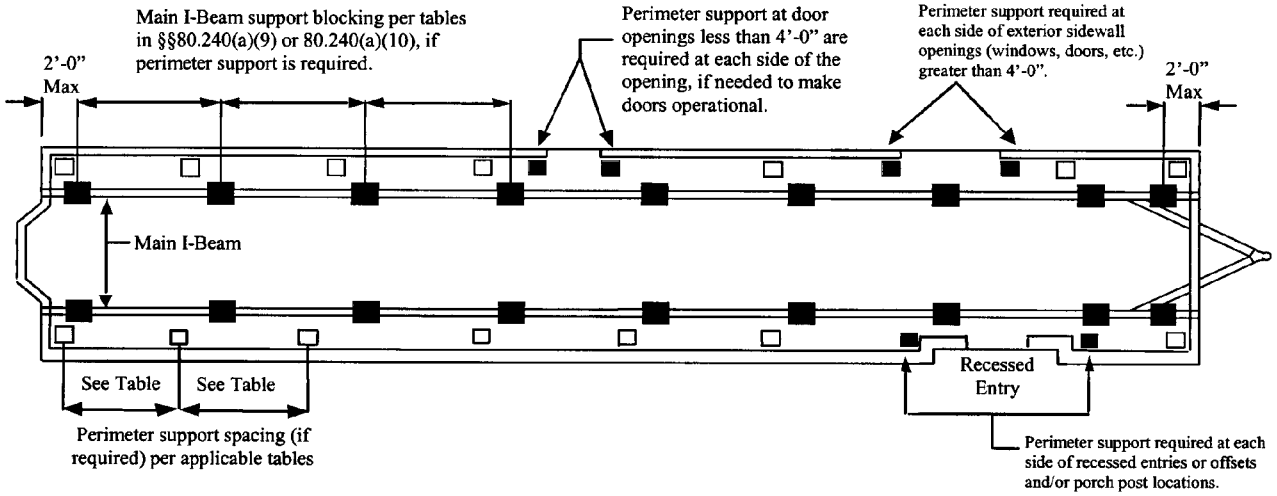


Figure: 10 TAC §80.240(b)(27)

DETERMINING COLUMN LOAD

To determine the column load for Column #1 at the endwall look up Span "A" in the table in §80.240(a)(11). To determine the column load for Column #2, look up the combined distance of both Span "A" and Span "B".

To determine the column load for Column #3 look up Span "B" in the table.
(NOTE: Mating line walls not supporting the beam must be included in the span distance.)

To determine the loads for Columns #4 and #5 look up Span "C". For Columns #6 and #7 look up load for span "D".

MARRIAGE LINE ELEVATION

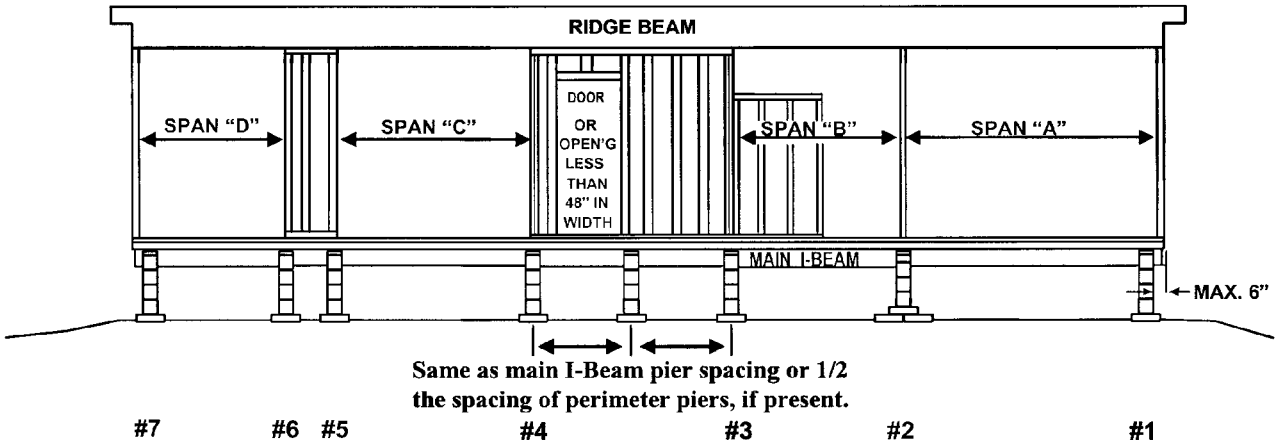


Figure: 10 TAC §80.260(a)(1)

SITE PREPARATION NOTICE

FAILURE TO PREPARE THE SITE PROPERLY BEFORE INSTALLING YOUR MANUFACTURED HOME MAY INVALIDATE YOUR WARRANTY AND MAY CAUSE PROBLEMS WITH YOUR HOME.

IF YOU ARE ACQUIRING LAND FOR A MANUFACTURED HOME AND WILL NOT HAVE THE ABILITY TO OVERSEE SITE PREPARATION YOURSELF, BE SURE THAT YOUR AGREEMENT WITH THE PARTY PROVIDING THE LAND COVERS THEIR RESPONSIBILITIES FOR SITE PREPARATION.

If you are acquiring a manufactured home you need to be sure that the site is properly prepared **BEFORE the home is installed**. If you will be having your home installed in a rental community, you should first be sure that the community has prepared the site properly and assumed that responsibility. If you are acquiring a manufactured home that is already installed, you should satisfy yourself that the site was properly prepared first.

Site Preparation includes AT LEAST the following: (1) selecting a site where the home will not be affected by rising or running water, as in the case of heavy rains, (2) grading the site, as needed, so that the land slopes away from the home, (3) making sure that the site will not create puddles or moisture build-up under the home by filling any depressions and, as needed, providing for drainage, (4) clearing away any plants, stumps, or debris on the site where the home will be placed, and (5) installing any required vapor retarder (and, if such a retarder is to be installed, trimming any grasses or other organic materials to a suitable height, not greater than 8").

The footing must be placed on firm, undisturbed soil, or fill compacted to at least 90% of its maximum relative density. Installation on loose, noncompacted fill may invalidate the home's limited warranty.

If, at the time of installation or within 90 days thereafter your retailer is providing skirting, the retailer must also provide and install any required vapor retarder and insure that there is adequate ventilation under the home. If the retailer is not providing these things, you should be sure that you have provided for any required vapor retarder and that you have provided adequately for ventilation under the home.

FAILURE TO PREPARE THE SITE PROPERLY AND/OR FAILURE TO TAKE APPROPRIATE MEASURES TO GUARD AGAINST MOISTURE BUILD-UP MAY CAUSE SERIOUS PROBLEMS WITH YOUR MANUFACTURED HOME INCLUDING, BUT NOT LIMITED TO, MOISTURE IN THE HOME, DE-LAMINATION OF FLOOR DECKING, BUCKLING OF WALLS AND FLOORS, WARPAGE THAT WILL MAKE DOORS AND WINDOWS NOT OPERATE PROPERLY, FAILURE OF ANCHORS TO HOLD THE HOME AS INTENDED, AND EVEN SERIOUS STRUCTURAL DAMAGE.

_____	_____
consumer's signature	consumer's signature
_____	_____
type or print name	type or print name
_____	_____
date	date

Figure: 10 TAC §80.260(a)(2)

Consumer Disclosure Statement

Esta forma está disponible en Español a petición del vendedor o al llamar al 1-800-500-7074

"When buying a manufactured home, there are a number of important considerations, including price, quality of construction, features, floor plan, and financing alternatives. The United States Department of Housing and Urban Development (HUD) helps protect consumers through regulation and enforcement of HUD design and construction standards for manufactured homes. Manufactured homes that meet HUD standards are known as 'HUD-code manufactured homes.'

The Texas Department of Housing and Community Affairs, regulates Texas manufacturers, retailers, brokers, salespersons, installers, and rebuilders of manufactured homes.

If you plan to place a manufactured home on land that you own or will buy, you should consider items such as:

"ZONING AND RESTRICTIVE COVENANTS" Municipalities or subdivisions may restrict placement of manufactured homes on certain lots, may prohibit the placement of homes within a certain distance from property lines, may require that homes be a certain size, and may impose certain construction requirements. You may need to obtain building permits and homeowner association approval before you place a manufactured home on a certain lot. Contact the local municipality, county, and subdivision manager to find out if you can place the manufactured home of your choice on a certain lot.

"WATER" Be sure that your lot has access to water. If you must drill a well contact several driller's for bids. If water is available through a municipality, utility district, water district, or cooperative, you should inquire about the rates you will have to pay and the costs necessary to join the water system.

"SEWER" If your lot is not serviced by a municipal sewer system or utility district, you will have to install an on-site sewer facility (commonly known as a septic system). There are a number of concerns or restrictions that will determine if your lot is adequate to support an on-site sewer facility. Check with the local county or a licensed private installer to determine the requirements that apply to your lot and the cost to install such a system.

"HOMEOWNER ASSOCIATION FEES" Many subdivisions have mandatory assessments and fees that lot owners must pay. Check with the manager of the subdivision in which your lot is located to determine if any fees apply to your lot.

"TAXES" Your home will be appraised and subject to *ad valorem taxes* as are other single-family residential structures. These taxes MUST be escrowed with your monthly payment, except that your lender is not obligated to impose an escrow requirement in a real property transaction involving a manufactured home if the lender is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property. On closing, you will be notified of all provisions pertaining to federal truth in lending disclosures.

"INSURANCE" Your lender may require you to obtain insurance that meets lender requirements and protects your investment. You should request quotes from the agent of your choice to obtain the insurance.

"TYPES OF MORTGAGES AVAILABLE" The acquisition of a manufactured home may be financed by a real estate mortgage or a chattel mortgage. A real estate mortgage may have a lower interest rate than a chattel mortgage.

"RIGHT OF RESCISSION" If you acquire a manufactured home, by purchase, exchange, or lease-purchase, you may, not later than the THIRD DAY after the date the applicable contract is signed, rescind the contract WITHOUT PENALTY OR CHARGE.

This **Disclosure** was provided by the retailer and/or lender shown below on this date and it was provided to me or us before I or we completed a credit application or before signing a contract to purchase a manufactured home.

Retailer Name / License # or Lender Date	Consumer Date
Street Address	Consumer Date
City County State Zip	Street Address
	City County State Zip

The disclosure must be given in writing in at least 12 point type. It may not be attached to any other disclosure or document or included in any other disclosure or document. The consumer must sign and date a copy of the disclosure to acknowledge that it was provided.

Figure: 10 TAC §80.260(a)(3)

CONSUMER PROTECTION DISCLOSURE - CHATTEL MORTGAGE TRANSACTIONS

Depending on whether you intend to keep your manufactured home as personal property or declare it as a part of real estate, you may (subject to lender approval) have a choice between a "chattel mortgage" or "real estate mortgage." A variety of financing terms may be available. You may qualify for one type of real estate financing, but not another. **The following are general significant differences between TYPICAL chattel mortgages and real estate mortgages:**

	CHATTEL MORTGAGES	REAL ESTATE MORTGAGES
Security for the loan	Typically only the home	Typically the home and land
Homestead	NO for land, YES for home	YES for land and home
Special Foundation requirements	Typically rare	May be required (foundations, access, other lender requirements and/or inspections)
Interest Rates	May generally be higher, but not always: depends on circumstances	May generally be lower, but not always: depends on circumstances
Additional expenses	Typically none, other than applying for a Statement of Ownership & Location	Survey, appraisal, document preparation and recording fees, title insurance, mortgage insurance, interim construction finance costs
Time to process the loan	Typically shorter	Typically longer
Amortization	Typically 20 years	Typically 30 years
Foreclosure/repossession	Typically faster and easier for lender, can result in loss of home and personal judgment against you	Typically takes longer and more expensive for all parties, can result in loss of home and land, personal judgment against you

TYPICAL COSTS ASSOCIATED WITH A CHATTEL ON A MANUFACTURED HOME:

Possible prepaid finance charges; escrow of taxes; homeowner insurance premiums

EXAMPLES OF MONTHLY PAYMENTS IN TYPICAL CHATTEL MORTGAGE TRANSACTIONS:

	EXAMPLE 1	EXAMPLE 2	EXAMPLE 3
Price (including inventory tax & title)	$80,000	$40,000	$15,000
Down Payment	$ 4,000 (5%)	$ 4,000 (10%)	$ 3,000 (20%)
Unpaid Balance	$76,000	$36,000	$12,000
1 year Physical Damage insurance	$ 1,200	$ 900	$ 400
Prepaid finance charges	$ 1,544	$ 738	$ 248
Total principal amount of loan	**$78,744**	**$37,638**	**$12,648**
Term of loan (years/months)	20 yrs (240 months)	20 yrs (240 months)	7 yrs (84 months)
Contract interest rate	10%	12%	14%
Monthly principal & interest (loan payment)	$759.90	$414.43	$237.02
1st payment principal/interest	$103.70 / $656.20	$38.05 / $376.38	$89.56 / $147.56
Last payment principal/interest	$753.64 / $6.26	$410.35 / $4.08	$234.28 / $2.74
Monthly tax escrow*	$139.91 (1)	$115.48 (2)	$64.63 (3)
Monthly insurance escrow	$0	$0	$33.33
Total monthly payment	**$899.81**	**$529.91**	**$276.82**

*Examples do not include homestead exemptions and assume taxes assessed at valuation equal to the purchase price, per $100 of valuation.

Taxes will vary depending on where the home is located. Check with your county tax office to learn your actual rates and to find out about homestead and any other exemptions.

(1) assumes taxes: county (.04698), school dist. (1.70714), hosp. dist. (.259), road & bridge (.0859);

(2) assumes taxes: county (.06505), ISD (1.61), hosp. dist. (.2133), water conserve. dist. (.29766);

(3) assumes taxes: ISD (1.285), college (1.9338), fire dist. (1.9495)

I ACKNOWLEDGE RECEIPT OF THIS DISCLOSURE BEFORE COMPLETION OF MY FIRST CREDIT APPLICATION

(sign)_____ (sign)_____ (date)_____

Figure: 10 TAC §80.260(a)(4)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code
Internet Address: www.tdhca.state.tx.us/mh/index.htm

NOTICE OF INSTALLATION (FORM T)

*HUD Label or Texas Seal # (s):*_____ *Serial # (s):*_____

*Manufacturer Name:*_____ *License No.*_____

Home Size - Width / Length: _____ X _____ *Weight* _____ *Date of Manufacture:* ____/____/____ *Model / Name:* _____

Draw A Map To Provide Directions To Home On Page 2

Consumer: _____ Phone Numbers: Home: (___) _____ Work: (___) _____

Mailing Address: _____ ZIP: _____

Site Address: _____ Within City Limits of _____ ZIP: _____

County Where Home is Installed: _____

Actual Installation Date: ____/____/____ Wind Zone on Data Plate: I (___) II (___) III (___)

	Name	Address	License #	Expiration Date	Phone #
Retailer					
Installer					

(___) **New** (___) **Used** **Does retailer or installer provide skirting? Yes** (___) **No** (___)

Is installation part of sales contract of used home? Yes (___) **No** (___) **Not Applicable** (___)

The home has been installed in accordance with:

(___) **1. Manufacturer's Home Installation Instructions (provide page number or option** _____**).**

(___) **2. State Generic Standards - Title 10 Texas Administrative Code (10 TAC) §§80.55, 56, 57, 58, and 59.**

(___) **3. A stabilization system registered with the department in accordance with 10 TAC §80.62 -** ***provide name of system or reference to MHD Approval Letter or registration*** _____.

(___) **4. A Special Foundation System** ***(attach a copy of the drawing for this system and provide a reference, if applicable, to any drawing previously submitted).***

IF NO METHOD IS CHECKED, IT WILL BE PRESUMED THAT OPTION 2 (STATE GENERIC STANDARDS) WAS USED.

To be submitted to the Department along with the required fee no later than the 15th day of the month after which the installation is completed. The Installation Report (Form T) should no longer be submitted with the title documents.

To be filed with the department within 30 days of original sale or within 10 days of a secondary move.

I verify that I am a licensed installer, that I am responsible for the installation described, and that the information supplied is true and correct.

_____ _____

Signature (Retailer/Installer) **Printed Name and Title**

DRAW MAP BELOW

Figure: 10 TAC §80.260(a)(5)

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
MANUFACTURED HOUSING DIVISION
507 SABINE, AUSTIN, TEXAS 78701
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-4706
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code
Internet Address: www.tdhca.state.tx.us/mh/index.htm

Estimate for Reassigned Warranty Work

Part I – Labor and Materials:
For each item on the inspection report, provide the information requested.

1) Description of proposed correction: _____

_____

_____

Estimated time: _____ Hourly rate: _____

Itemized cost of materials: _____

_____

2) Description of proposed correction: _____

_____

_____

Estimated time: _____ Hourly rate: _____

Itemized cost of materials: _____

_____

3) Description of proposed correction: _____

_____

_____

Estimated time: _____ Hourly rate: _____

Itemized cost of materials: _____

_____

Form: Estimate for Reassigned Warranty Work *Page 1 of 2*

Part II – Other Costs and Expenses

Block 1: Travel	
Starting location, which must be the closer of the nearest office to the site of the re-assigned warranty work or the in-state service center for the licensee. **Starting location:**	
Mileage is reimbursable at the greater of the rate of $0.35 per mile, not to exceed $75.00 per day, or the State of Texas approved rates from time to time in effect for reimbursement of state employees' travel expenses. **Estimated round-trip mileage:**	
Itemized list of any other travel costs:	

Block 2: Lodging	
Reimbursement for overnight lodging is to include the actual room rate and any applicable taxes but does not include any long distance telephone calls, entertainment, food, or beverages. Reimbursement may not exceed the State of Texas approved rates for reimbursement of state employees' lodging. **Name, location, and rate:**	

Block 3: Meals	
Reimbursement for meals (receipts are required) shall not exceed the greater of $25.00 per day or the State of Texas approved rate for reimbursement of state employees' meals while traveling. Alcoholic beverages are not subject to reimbursement. **Estimated cost of meals:**	

Block 4: Administrative and oversight costs
Administrative services may not exceed 20% of the total estimate. Provide an explanation of the necessary administrative services, including the number of hours required and the hourly rate of each person providing such services:

Part III – Certification

The undersigned represents that:

(1) the actual costs for labor charged to the Texas Department of Housing and Community Affairs, Manufactured Housing Division and/or the Manufactured Homeowner's Recovery Trust Fund will not exceed the actual number of hours expended, rounded to the nearest quarter of an hour increment, times the hourly rate specified above;

(2) the actual costs for materials charged to Texas Department of Housing and Community Affairs, Manufactured Housing Division and/or the Manufactured Homeowner's Recovery Trust Fund will not exceed the costs actually charged to the undersigned and such costs do not exceed the costs at which the undersigned is able to obtain such materials for its own account;

(3) the hourly rate being charged by the undersigned does not exceed the normal hourly rate at which the specified individuals customarily provide their services; and

(4) if the work to be performed involves any repair or alteration that would require DAPIA approval, such approval will be obtained and a copy of such approval, together with all DAPIA-approved drawings relating thereto, will be submitted when reimbursement is requested.

Name of Licensee: _____ This estimate submitted this ____ day of _____,

License number: _____

_____
Signature of licensee or duly authorized officer or representative

_____
Printed name of licensee or duly authorized officer or representative

Figure: 10 TAC §80.260(a)(6)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

P. O. BOX 12489 Austin, Texas 78711-2489

(800) 500-7074, (512) 475-2200 FAX (512) 475-1109

Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code

Internet Address: www.tdhca.state.tx.us/mh/index.htm

APPLICATION FOR STATEMENT OF OWNERSHIP AND LOCATION

Instructions: Submit this completed form (type or print clearly) with the required fee to the above address.

BLOCK 1: Transaction Identification

This application is for:

- ☐ First time issuance of an SOL for a new home (first retail sale)
- ☐ Revised
- ☐ Correction
- ☐ Other

_____

(For Department Use Only) Coding:

Lien on file: Y / N Lienholder Code

County Code: Right of Surv.: Y / N

Retailer #: Manufacturer #:

BLOCK 2: Home Information

Manufacturer Name:		Model:	
Address:		Date of Manufacture:	
City, State, Zip:		Total Square Feet:	
License Number:		Wind Zone:	

	Label/Seal Number	*Serial Number*	*Weight*	*Size**
Section 1:				X
Section 2:				X
Section 3:				X
Section 4:				X

**NOTE: Size must be reported as the outside dimensions (length and width) of the home as measured to the nearest ½ foot at the base of the home, exclusive of the tongue or other towing device.*

BLOCK 3: Home Location

Was Home Moved? ☐ No ☐ Yes

Was Home Installed? ☐ No ☐ Yes If yes, provide installer information below, if known

Installer Name:			
Address/City/State/ZIP:			
Installer Phone:		Installer Fax:	
Physical Location: *(or 911 address)*	*Physical Address (cannot be a Rt. or P. O. Box)*	*City*	*State* *ZIP* *County*

BLOCK 4: Ownership Information **IF ownership changed, date of transfer:**

(4a) Seller(s) or Transferor(s)		(4b) Purchaser(s), Transferee(s), or Owner(s)	
Name	License # if Retailer:	Name	License # if Retailer:
Name		Name	
Mailing Address		Mailing Address	
City/State/Zip		City/State/Zip	
Daytime Phone Number ( ) -		Daytime Phone Number ( ) -	

BLOCK 5: Right of Survivorship (if no box is checked, joint owners will NOT have right of survivorship)

If joint owners desire right of survivorship, check the applicable box below:

- ☐ Husband and wife will be the only owners and agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner.
- ☐ Joint owners are other than husband and wife, desire right of survivorship, **and** have attached a completed Affidavit of Fact for Right of Survivorship or other affidavits as necessary to meet the requirements of §1201.213 of the Standards Act.

Form: Application for Statement of Ownership and Location *Page 1 of 2*

BLOCK 6: Personal/Real Property Election - Purchaser(s)/Transferee(s)/Owner(s) check one election type:

☐ Personal Property – Applicant elects to treat this home as personal property. All documents affecting title to the home will be filed in the records of the Department.

☐ Real Property – I (we) elect to treat this home as real property and certify that I am (we are) entitled to make this election in accordance with Section 1201.2055 of the Occupations Code because (**one** box **must** be checked):

☐ I (we) own the real property that the home is attached to.

☐ I (we) have a qualifying long-term lease for the land that the home is attached to.

I (We) understand that the home will not be considered to be real property until a certified copy of the SOL has been filed in the real property records of the county in which the home is located AND a copy stamped "Filed" has been submitted to the Department.

Legal description must be provided for real property: _____

_____

☐ For Title Companies or Attorney's Offices – List your file or GF #: _____

☐ Inventory – Retailer number must be provided in Block 4b. ***(FOR RETAILER USE ONLY)***

BLOCK 7: Designated Use - to be designated by purchaser(s), transferee(s), or owner(s)

☐ Residential Use (as a dwelling) OR

☐ Non-Residential - Check **one** of the following: ☐ *Business Use* ☐ *Salvage*

BLOCK 8: Liens - Specify any liens (other than tax liens), charges, or other encumbrances to be recorded on the SOL

Date of First Lien:		Date of Second Lien:	
Name of First Lienholder:		Name of Second Lienholder:	
Mailing Address:		Mailing Address:	
City/State/ZIP:		City/State/ZIP:	
Daytime Phone Number:	( ) -	Daytime Phone Number:	( ) -

BLOCK 9: Special Mailing Instructions.

IF a certified copy of an SOL is to be mailed to anyone other than the owner or lienholder of record (such as a closing agent), please provide that mailing address here and enclose the additional fee.

Name:	
Company:	
Street Address:	
City, State, Zip:	

BLOCK 10: Certification and Notarization - The statements set forth herein are made under oath and are true and correct.

☐ ***Seller* certifies that any required habitability warranty has been delivered (consumer to consumer sales are exempt).**

☐ **If the Statement of Ownership and Location is for a used home, seller certifies that the purchaser has been given a written disclosure on a form prescribed by the Department describing the condition of the home and of any appliances that are included in the home.**

(10a) Each seller/transferor must sign, but notary signature and seal are optional.	(10b) Each purchaser/transferee or owner must sign, and notary signature and seal are required.
_____ *Signature of seller/transferor*	_____ *Signature of purchaser/transferee or owner*
Sworn and subscribed before me this ____ day of _____, 20___	*Sworn and subscribed before me this ____ day of _____, 20___*
_____ *Signature of Notary*	_____ *Signature of Notary*
SEAL	*SEAL*
_____ *Signature of seller/transferor*	_____ *Signature of purchaser/transferee or owner*
Sworn and subscribed before me this ____ day of _____, 20___	*Sworn and subscribed before me this ____ day of _____, 20___*
_____ *Signature of Notary*	_____ *Signature of Notary*
SEAL	*SEAL*

Figure: 10 TAC §80.260(a)(7)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
P. O. BOX 12489 Austin, Texas 78711-2489
(800) 500-7074, (512) 475-2200 FAX (512) 475-1109
Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code
Internet Address: www.tdhca.state.tx.us/mh/index.htm

RELEASE OR FORECLOSURE OF LIEN

(Please type or print clearly.)

FORM B

BLOCK 1: Home Information (Must be completed)

Manufacturer Name:		License #:	
Manufacturer Address:			
Model :	Total Sq. Ft.:	Date of Manufacture:	

Label/Seal Number	Complete Serial Number	Weight	Size
Section One:			
Section Two:			
Section Three:			

BLOCK 2: For Release of Liens

(Name of Lienholder)	*(Address)*	*(City)*	*(State)*	*(Zip)*	*(Phone)*
(Name of Consumer)	*(Address)*	*(City)*	*(State)*	*(Zip)*	*(Phone)*

Release of Lien Effective Date:

BLOCK 3: For Foreclosure of Lien

Date of Repossession: _____ Release of Lien Effective Date: _____

***Method** of Repossession (MUST CHECK ONE):*

( ) Terms of Security (Lien) Agreement

( ) Judicial Order (Sequestration, Possessory Lien, etc.) If by judicial order, attach a copy of the Sheriff's Bill of Sale. If the lien was not recorded on the document of title, a COPY of the Security Agreement or Judicial Order must be attached.

BLOCK 4: Sale of Foreclosed Manufactured Home

MUST be completed IF foreclosure is being recorded

***Method** of Sale (MUST CHECK ONE):*

( ) I (We) will sell the home to or through a licensed retailer.

( ) I (We) will sell the home directly to a consumer and have the required retailer license.

( ) I (We) will sell the home directly to a consumer and I am (We are) not required to be licensed as a retailer under Subchapter C of the Standards Act.

If either of the first two items above is checked and this form is submitted in conjunction with an application to record the sale of the manufactured home, the name and license number of the retailer must be provided here: R-_____.

BLOCK 5: Notarized Signature Required

I (We) certify that the statements set forth hereinabove and the information attached hereto are true and correct.

_____
(Signature of Person Authorized to Sign for Lienholder)

Seal

_____ _____
(Title of Person Signing) *(Phone)*

Sworn and subscribed before me this _____ day of _____, 20_____
(month) *(year)*

_____
(Signature of Notary)

_____ _____
(Typed Name of Notary) *(Date Commission Expires)*

Figure: 10 TAC §80.260(a)(8)

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QUICK PROCESSING

OF APPLICATION FOR STATEMENT OF OWNERSHIP AND LOCATION (SOL)

To receive Quick Processing, the application MUST:

- ☐ **be complete,**
- ☐ **be clearly labeled for Quick Processing or have this coversheet attached to the front,**
- ☐ **be delivered in person or by overnight mail to address above, and**
- ☐ **be accompanied by full payment of all fees, including additional Quick Processing fee.**

BLOCK 1: Select Return Method

☐ To be picked up. Call _____ at (___) ____ - _____ when ready.

☐ Return by regular mail

☐ Return using _____ overnight service. One of the following **MUST** be provided (**credit cards are NOT accepted**):

- ☐ Requestor's overnight service account # _____
- ☐ Pre-paid return airbill enclosed with the application

BLOCK 2: Provide Address to Return Incomplete Applications to

Name:	
Company:	
Street Address:	
City, State, Zip:	

BLOCK 3: Specify person to contact with questions about the application

Name:	
Phone Number:	( ) -

Note: Quick Processing takes 3 business days from the date that the complete application is received in the Manufactured Housing Division (MHD) mailroom. Due to mail delivery and routing times, the date received by MHD may be later than the date it is received by TDHCA. Your certified copy of the SOL will be returned via **regular** mail unless a pre-paid return airbill or account number is provided.

Form: Quick Processing Form *Page 1*

Figure: 10 TAC §80.260(a)(9)

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FORM M

(Please type or print clearly.)

IMPORTANT NOTICE!
Place this form on top of the SOL application packet

This form is required when paying for multiple applications with one check, thereby enabling us to match refunds with applications.

	HUD #, Seal #, or Serial #	Purchaser / Owner Name(s)	Fee(s) Per Home
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			
21.			
22.			
23.			
24.			
25.			
26.			

_____
(Payor)

( ) _____ ( ) _____ _____ Total Fees: $ _____

(Phone Number) *(Fax Number)* *(Check Number)*

Figure: 10 TAC §80.260(a)(10)

Texas Department of Housing and Community Affairs

MANUFACTURED HOUSING DIVISION

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AFFIDAVIT OF FACT
FOR RIGHT OF SURVIVORSHIP OWNERSHIP AGREEMENT

BLOCK 1: Home Information (Must be completed)

Manufacturer Name:		License #:	
Manufacturer Address:	City/State/Zip:		
Model :	Total Sq. Ft.:	Date of Manufacture:	

Label/Seal Number	Complete Serial Number	Weight	Size
Section One:			
Section Two:			
Section Three:			

BLOCK 2: Type of Mutual Agreement

The relationship that exists between the undersigned can be defined as (check one):

- ☐ Legally married (If this box is checked, complete Block 6 only)
- ☐ Common Law marriage (If this box is checked, complete Block 3 and Block 6)
- ☐ Co-owners are unmarried (If this box is checked, complete Block 4 and Block 6)
- ☐ Co-owners are married but not to each other (If this box is checked, complete Block 5 and Block 6)

BLOCK 3: Attestation of Common Law Marriage

We, the undersigned, acknowledge and affirm that we are married by common law to each other and that any previous marriage(s) legal or common law, between any of the undersigned and other party(ies) was legally terminated by a spouse in death or by a legal divorce.

Signature of Co-owner Date Signature of Co-owner Date

BLOCK 4: Attestation of Unmarried Status

I, the undersigned, acknowledge and affirm that I am not married, legally or by common law marriage.

Signature of Co-owner Date Signature of Co-owner Date

BLOCK 5: Attestation of Separate Property By the Undersigned Spouse

Spouse #1

In order to establish right of survivorship between the co-owners of said manufactured home, I, _____ the spouse of _____, do hereby acknowledge and attest that any and all property rights and interests in the above referenced manufactured home is the separate property of the co-owners exclusively.

Signature of spouse #1: _____ Date: _____

Spouse #2

In order to establish right of survivorship between the co-owners of said manufactured home, I, _____ the spouse of _____, do hereby acknowledge and attest that any and all property rights and interests in the above referenced manufactured home is the separate property of the co-owners exclusively.

Signature of spouse #2: _____ Date: _____

BLOCK 6: Signatures of Co-Owners
NOTARIZATION REQUIRED

We, the undersigned, hereby agree that the ownership of the above described manufactured home shall, from this day forward, be held jointly and in the event of death, shall pass to the surviving owner(s).

Signature of Co-owner Date Signature of Co-owner Date

Before me personally appeared the person (s) whose signature (s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this _____ day of _____ 20_____

_____ *SEAL*
(Notary Public)

_____ *Notary Public State of Texas*
(Commission Expires)

Form: Affidavit of Fact for Right of Survivorship *Page 1*

Figure: 10 TAC §80.260(a)(11)

Retailer/Broker Disclosure Statement
Installation Responsibility on Purchase of Used Manufactured Home
(Required per §80.121(a)(3)(C) of 10 TAC, Chapter 80)

Check Appropriate Boxes:

☐ **The purchase of your used manufactured home INCLUDES the installation; therefore the license holder WILL provide the required installation warranty.**

☐ **The purchase of your used manufactured home DOES NOT include the installation; therefore the retailer will NOT provide an installation warranty.**

☐ **The used manufactured home is already installed, and the retailer will do the following:**

- ☐ **Check Leveling**
- ☐ **Check Vapor Retarder**
- ☐ **Check Stabilization System**
- ☐ **Other** _____
- ☐ **None of the above**

☐ **The used manufactured home is a is already installed in a Wind Zone II county; however the home is a Wind Zone I, which means this home was not designed or constructed to withstand a hurricane force wind occurring in a Wind Zone II or III area. If you have the home re-installed in another location, the home cannot be installed in a Wind Zone II area unless it was constructed before September 1, 1997, pursuant to §1201.256 of the Standards Act.**

Each of us, by signing below, agree that we were given this disclosure on the date shown and it had been fully completed at the time it was given to us.

Name:_____ **Name:**_____

Signature:_____ **Signature:**_____

Date:_____ **Date:**_____

By signing below, I confirm that I am the person licensed under the Texas Manufactured Housing Standards Act who provided this disclosure (including any attachments) to the consumers named above.

Name:_____ **Signature:**_____

Date:_____ **License number:**_____

Figure: 10 TAC §80.260(a)(12)

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WARRANTY AND DISCLOSURE FOR A USED MANUFACTURED HOME

If the manufactured home does not have a HUD Label or Texas Seal, a copy of this disclosure must be submitted to the Department along with an application for a Texas Seal and the required fee.

BLOCK 1: Home Information

Manufacturer Name:		Model:	
Address:		Date of Manufacture:	
City, State, Zip:		Total Square Feet:	
License Number:		Wind Zone:	

	Label/Seal Number	*Serial Number*	*Weight*	*Size**	** NOTE: Size must be reported as the outside dimensions (length and width) of the home as measured to the nearest ½ foot at the base of the home, exclusive of the tongue or other towing device.*
Section 1:				X	
Section 2:				X	
Section 3:				X	
Section 4:				X	

BLOCK 2: Statement of Warranty
(This block does not apply to exempt consumer to consumer sales.)

The above-described home is warranted by the seller to the purchaser to be habitable and to remain habitable until the later of 60 days from the date of the purchase agreement selling or transferring the home or 60 days after the date that the installation of the home is completed. By "habitable" it is meant that:

- **There is no defect or deterioration in or damage to the home that creates a dangerous situation;**
- **The plumbing, heating, and electrical systems are in safe working order;**
- **The walls, floor, and roof are:**
  - **free from a substantial opening that was not designed and**
  - **structurally sound; and**
- **All exterior doors and windows are in place. Any window that is designated an egress window is in working order.**

The PURCHASER, _____, must notify the SELLER, _____,
(name of purchaser) (name of seller)
IN WRITING within 65 DAYS of any DEFECT that makes the home NOT HABITABLE or the SELLER will have NO LIABILITY for the warranty of habitability.

Appliances: *Indicate the appliance being conveyed and describe any known defects.*

Check Appliances Conveyed with home	Make and Model	Gas or Electric	Describe Any Known Defects
☐ Refrigerator			
☐ Range			
☐ Stove top only			
☐ Microwave			
☐ Washer			
☐ Dryer			
☐ Trash Compactor			
☐ Dishwasher			
☐ Other			

Home: *Any item present that does not describe any known defects is assumed to have no known defects.*

Interior	Describe Any Known Defects
Living room:	
Kitchen:	
Bedroom 1	
Bedroom 2	
Bedroom 3	
Bathroom 1	
Bathroom 2	
Laundry/utility room:	
Other rooms (list):	

General Home Exterior	Describe Any Known Defects
Roof decking	
Roof covering	
Floor underside	
Walls	
Other	

Systems	Describe Any Known Defects
Electrical system	
Water Heater	
Air Conditioner	
Plumbing system	

BLOCK 3: Signatures

I certify that the above information is, to the best of my knowledge, complete and accurate.

(Seller's Signature)	*(Printed Name of Seller or Seller's authorized representative)*	*(Date)*

I acknowledge receipt of the Warranty and Disclosure for the purchase of a used manufactured home.

(Consumer/Purchaser's Signature)	*(Printed Name of Consumer/Purchaser)*	*(Date)*

Figure: 10 TAC §80.260(a)(13)

MANUFACTURER'S CERTIFICATE OF ORIGIN
TO A MANUFACTURED HOME

THE UNDERSIGNED MANUFACTURER HEREBY CERTIFIES THAT THE NEW MANUFACTURED HOME DESCRIBED HEREIN, THE PROPERTY OF SAID MANUFACTURER, HAS BEEN TRANSFERRED ON THE DATE SET FORTH HEREIN, SUBJECT TO THE TERMS AND CONDITIONS OF THE INVOICE OR OTHER APPLICABLE AGREEMENT TO:

NAME OF RETAILER	REG. NO.	ADDRESS OF RETAILER	CITY	STATE	ZIP

TRANSFER DATE	MODEL DESIGNATION	DATE OF MANUFACTURE	NUMBER OF SECTIONS	TOTAL SQUARE FEET

LABEL/DECAL NUMBER	SERIAL NUMBER	WEIGHT	SIZE	EXCLUDING HITCH

FIRST ASSIGNMENT (FOR RETAILERS ONLY) **DATE**

TO:

NAME OF RETAILER	REGISTRATION NO.

ADDRESS		
CITY	STATE	ZIP

TYPE NAME AND TITLE OF PERSON AUTHORIZED TO SIGN FOR TRANSFERENCE TO RETAILER

AUTHORIZED SIGNATURE

SECOND ASSIGNMENT (FOR RETAILERS ONLY) **DATE**

TO:

NAME OF RETAILER	REGISTRATION NO.

ADDRESS		
CITY	STATE	ZIP

TYPE NAME AND TITLE OF PERSON AUTHORIZED TO SIGN FOR TRANSFERENCE TO RETAILER

AUTHORIZED SIGNATURE

NOTE: AT FIRST RETAIL SALE THIS CEASES TO EVIDENCE OWNERSHIP OF THE HOME.

CONSTRUCTED FOR:

ENERGY ZONE _____ **WIND ZONE** _____

ROOF LOAD ZONE _____

THE MANUFACTURER WARRANTS THAT A GOOD AND MARKETABLE TITLE IS BEING TRANSFERRED AND THAT NO OTHER VALID MANUFACTURER'S CERTIFICATE OF ORIGIN IS ISSUED AND OUTSTANDING ON THE MANUFACTURED HOME DESCRIBED HEREIN.

MANUFACTURER OF HOME	REGISTRATION NO.

ADDRESS OF MANUFACTURER

CITY	STATE	ZIP

AUTHORIZED SIGNATURE/TITLE

INVOICE # _____

Figure: 10 TAC §80.260(b)

Declaración de Divulgaciones para el Consumidor

Al comprar una vivienda prefabricada, hay varias consideraciones importantes, incluyendo el precio, la calidad de construcción, las características, el plano de piso, y las alternativas para financiamiento. El Departamento de Vivienda y Desarrollo Urbano de EE.UU. (HUD) ayuda a proteger los consumidores a través de la regulación y ejecución de normas de HUD para el diseño y la construcción de viviendas prefabricadas. Las viviendas prefabricadas construidas de acuerdo con las normas de HUD se conocen como "HUD-code manufactured homes".

El Departamento de Viviendas y Asuntos Comunitarios reglamenta los fabricantes, minoristas, agentes, vendedores, instaladores, y reconstructores de viviendas prefabricadas en Texas.

Si usted desea colocar una vivienda prefabricada en terreno que le pertenece o que comprará, usted debe considerar detalles como los siguientes:

"RESTRICCIONES Y CONVENIOS RESTRICTIVOS" Municipalidades o subdivisiones pueden restringir la colocación de viviendas prefabricadas en ciertos lotes, restringir su colocación a cierta distancia de linderos de propiedad, requerir que sean de cierto tamaño, y establecer ciertos requisitos para su tamaño y construcción. Puede que usted tenga que obtener permisos de construcción y aprobación de una asociación de propietarios antes de colocar una vivienda prefabricada en un lote en particular. Comuníquese con el gerente de la municipalidad, el condado, y la subdivisión local para determinar si la vivienda prefabricada que usted prefiere se puede colocar en un lote en particular.

"AGUA" Asegurase de que su lote tiene acceso al agua. Si tiene que perforar un pozo, comuníquese con varios perforadores para ofertas. Si agua está disponible a través de una municipalidad, un distrito de servicio público, un distrito de agua, o una cooperativa, usted debe preguntar sobre las tarifas que tendrá que pagar y los costos de ingresar con el sistema de agua.

"ALCANTARILLA" Si su lote no es servido por un sistema alcantarilla municipal o un distrito de servicio público, usted tendrá que instalar un sistema para aguas cloacales (conocido como una fosa séptica). Hay varias consideraciones o restricciones que determinarán si su lote es adecuado para soportar una fosa séptica. Para determinar los requisitos que se aplican a su lote y el costo de instalar tal sistema, comuníquese con el condado o un instalador privado que tiene licencia.

"HONORARIOS PARA UNA ASOSIACION DE DUENOS" Muchas subdivisiones tienen tasas y cuotas obligatorias que los propietarios de lotes tienen que pagar. Comuníquese con el gerente de la subdivisión donde está localizado su lote para determinar si hay honorarios asociados con su lote.

"IMPUESTOS" Su vivienda será evaluada y sujeto a impuestos "*al valórem*" igual que otras estructuras residenciales para una sola familia. Estos impuestos se tienen que poner en plica con su pago mensual las primas para aseguranza, honorarios, u otros cobros en conexión con los préstamos asegurados por los bienes raíces residenciales, excepto que su prestamista no está obligado a imponer un requisito de plica en una transacción de bienes raíces que incluyen una

vivienda prefabricada si el prestamista es una institución financiera asegurada por el gobierno federal y de otros modos no requiere la plica de los impuestos. En el cierre, le notificarán de todas las divulgaciones requeridas por el gobierno federal para préstamos honestos.

"ASEGURANZA" Su prestamista puede requerir que usted obtenga aseguranza que satisface los requisitos del prestamista y que protege su inversión. Usted debe de pedir cotización del agente que usted prefiere para obtener aseguranza.

"TIPOS DE HIPOTECAS DISPONIBLES" La compra de una vivienda prefabricada se puede financiar con una hipoteca para bienes raíces o con una hipoteca prendaria. Una hipoteca para bienes raíces puede tener una taza de interés mas baja que una hipoteca prendaria.

"DERECHO A RESCINDIR" Si usted adquiere una vivienda prefabricada, por medio de una compra, un intercambio, o un contrato para la compra tras arrendamiento, usted puede, hasta el TERCER DIA después de la fecha en que se firma el contrato pertinente, rescindir el contrato SIN PENA NI COBRO.

Esta **Divulgación** fue proveída por el minorista y/o el prestamista indicado abajo en esta fecha y me(nos) fue proveído antes de que completara(mos) una aplicación para crédito o antes de firmar un contrato para la compra de una vivienda prefabricada.

Nombre y # de licencia del minorista o prestamista **Fecha**	**Consumidor** **Fecha**
Dirección	**Consumidor** **Fecha**
Ciudad Condado Estado Código Postal	**Dirección**
	Ciudad Condado Estado Código Postal

Antes de completar una aplicación para crédito, el minorista o su agente tiene que dar al consumidor esta declaración en texto tipográfico de por lo menos tamaño 12, y no puede estar adjunto con, ni incluido en, ninguna otra divulgación u otro documento.

Figure: 16 TAC §33.21(a)

Airline beverage	$1000
Bonded warehouse	$5000
Brewers	$15000
Class A winery	$2500
Class B winery	$1000
Distillers	$25000
General class B wholesaler	$2500
Industrial	$1000
Local class B wholesaler	$2500
Medicinal pharmacy	$1000
Mixed beverage	$7500
or 200% of maximum calendar month tax liability	
whichever is greater ($25000 maximum)	
Private carrier	$1000
Private club	$4500
or 200% of maximum calendar month tax liability	
whichever is greater ($25000 maximum)	
Private club exemption	$3000
or 200% of maximum calendar month tax liability	
whichever is greater ($25000 maximum)	
Private storage	$1000
Public storage	$1000
Rectifiers	$10000
Wholesaler	$5000
Wine bottler	$2500

Figure: 28 TAC §21.2106(b)(7)

NOTICE OF CERTAIN MANDATORY BENEFITS

This notice is to advise you of certain coverage and/or benefits provided by your contract with [name of carrier].

Coverage of Tests for Detection of Human Papillomavirus and Cervical Cancer

Coverage is provided, for each woman enrolled in the plan who is 18 years of age or older, for expenses incurred for an annual medically recognized diagnostic examination for the early detection of cervical cancer. Coverage required under this section includes at a minimum a conventional Pap smear screening or a screening using liquid-based cytology methods, as approved by the United States Food and Drug Administration, alone or in combination with a test approved by the United States Food and Drug Administration for the detection of the human papillomavirus.

Figure: 30 TAC §304.34(d)

Violation	1st time noted within previous 24 months	2nd time noted within previous 24 months	3rd time noted within previous 24 months
1. Diversion, use, or transport without a watermaster approved declaration of intent (applicable to water right holders only)	On-site inspection notice (warning)	Citation/fine of $200 for minors*; $500 for majors**	Referral for formal enforcement action
2. Failure to provide a measuring device or alternative method of measurement	On-site inspection notice (warning)	Citation/fine of $200 for minors*; $500 for majors** unless corrected within 30 days	Referral for formal enforcement action
3. Water right holder does not pass water which the holder is not entitled to hold or impound in accordance with special conditions of water rights or watermaster	On-site inspection notice (warning)	Citation/fine of $200 for minors*; $500 for majors**	Referral for formal enforcement action
4. Late report of diversion, transport, use, release, or impoundment	On-site inspection notice (warning)	Citation/fine of $200 for minors*; $500 for majors**	Referral for formal enforcement action

***minor:** A water right of 5,000 acre-feet or less

****major:** A water right of greater than 5,000 acre-feet

Figure: 30 TAC §304.62(a)

$$\text{Municipal Assessment Rate} = \frac{I\text{-}M(N)}{(RF_s)(AF_s)+(AF_1)+(RF_2)(AF_2)+(RF_3)(AF_3) \ldots (RF_n)(AF_n)}$$

I	:	Income needed to meet the adopted budget
M	:	Base charge per account
N	:	Total number of accounts to be assessed in the water division
n, s	:	Code number corresponding to a category or type of use
RF_n, RF_s	:	Rate factor for each of the following categories of use:

municipal and domestic	$RF_1 = 1.00$
industrial - consumptive	$RF_2 = 1.00$
irrigation	$RF_3 = 0.80$
mining - consumptive	$RF_4 = 1.00$
recreation and pleasure - consumptive	$RF_5 = 1.00$
non - consumptive (industrial, mining, recreation)	$RF_6 = 0.20$
hydroelectric - priority	$RF_7 = 0.20$
hydroelectric - non-priority	$RF_8 = 0.05$
recharge for underground storage	$RF_9 = 0.50$
salt water	$RF_{10} = 0.05$
spreader dam diversion	$RF_{11} = 0.40$
secondary use	$RF_{12} = 0.50$
on-channel storage	$RF_{s13} = 0.40$
stock raising	$RF_{14} = 1.00$
game preserves	$RF_{15} = 1.00$
ag-wetland	$RF_{16} = 0.80$
reuse	$RF_{17} = 0.50$
public parks	$RF_{18} = 0.80$
multi-use	$RF_{19} = 1.00$
bed and banks	$RF_{21} = 0.05$
other	$RF_{20} = 1.00$

AF_n, AF_n: Total diversion, or storage, authorization for all water rights to be assessed in each water division or group of water divisions, for each of the above categories of use, which are defined as follows:

Municipal and Domestic - The total amount of water authorized for diversion under a water right for this purpose, including non-exempt domestic and livestock uses.

Industrial, Mining, Recreation, or Salt Water Diversions - The total amount of water authorized for consumptive use for each of these categories of use under a water right. In the event there is no specific authorization for consumptive use, the assessment will [~~shall~~] be based on the total amount of water authorized for diversion under the water right. Diversions that do not conform to the definition for salt water diversion in §304.4 of this title (relating to Definitions) will be assessed at the rate for the category of use(s) authorized by the water right. For any diversion that would fit the salt water diversion definition except for the fact that the watermaster may be required to protect that water right against junior appropriators, the water right holder or agent may achieve conformity with the definition, and be assessed at the salt water rate, by providing to the executive director, at least 60 days in advance of assessment billing, an affidavit waiving such protection. Such an affidavit will [~~shall~~] be subject to approval by the executive director and must [~~shall~~] specify the duration for waiving such protection, but must [~~shall~~] not be for less than one assessment accounting period, and will [~~shall~~] be coterminous with assessment periods as establish by the commission.

Nonconsumptive Industrial, Mining, or Recreation - under a given water right where part of the authorization for one of these uses is specified as being consumptive, the remainder will be considered nonconsumptive.

Irrigation, Hydroelectric (Priority and Non-priority), Recharge, Spreader Dam Diversions, Stock Raising, Game Preserves, Public Parks or Secondary Use - the total amount of water authorized for diversion for each of these categories of use under a water right.

On-channel Storage - the total conservation storage authorized for impoundment under a water right. This category includes only on-channel reservoirs authorized under the Texas Water Code, except those reservoirs exempted in accordance with [~~the~~] Texas Water Code, §11.142.

Ag-wetland - the total amount of water authorized in a water right for diversion for this use. This term also includes the total amount of water authorized in a water right for the diversion for "wetland" use.

Reuse - the amount of water authorized in a water right for diversion for reuse. This assessment will be in addition to the assessment for the other uses authorized in the water right.

Multi-use - the total amount of water authorized under a water right for more than one use where the amount of water is not allocated to each individual use.

Bed and Banks - the total amount authorized for the transportation of water without the reuse of return flows. This term also includes the total amount authorized for the transportation of privately owned groundwater and groundwater based effluent.

Other - the total amount of water authorized for diversion in a water right for a use not otherwise listed.

Figure: 34 TAC §77.21(d)

Judicial Retirement System of Texas Plan Two

Credit Purchase Option (Government Code Section 838.108)

Interest Rate: 8.00%
Salary Increase Rate: 4.00%

JRS II Members with At Least 15 Years of Service Credit, but Less Than 20 Years of Service Credit; Purchasing Exact Amount of Service to Become Eligible for Unreduced Benefits with 20 Years of Service Credit

	Continues Working to Retirement Eligibility				
	15	16	17	18	19
40	289.188%	238.552%	184.493%	126.839%	65.406%
41	288.694%	238.172%	184.216%	126.659%	65.318%
42	288.164%	237.769%	183.927%	126.471%	65.226%
43	287.588%	237.336%	183.621%	126.278%	65.133%
44	286.953%	236.855%	183.284%	126.068%	65.034%
45	286.251%	236.320%	182.903%	125.831%	64.924%
46	285.476%	235.726%	182.477%	125.561%	64.798%
47	284.621%	235.072%	182.007%	125.260%	64.654%
48	283.688%	234.355%	181.494%	124.933%	64.496%
49	282.677%	233.570%	180.928%	124.573%	64.325%
50	281.583%	232.717%	180.305%	124.174%	64.135%
51	280.397%	231.798%	179.632%	123.734%	63.923%
52	279.104%	230.808%	178.915%	123.267%	63.692%
53	267.297%	229.723%	178.142%	122.772%	63.452%
54	244.647%	228.507%	177.278%	122.230%	63.194%
55	221.009%	221.009%	176.292%	121.609%	62.902%
56	196.360%	196.360%	175.177%	120.893%	62.564%
57	170.691%	170.691%	170.691%	120.088%	62.174%
58	143.998%	143.998%	143.998%	119.211%	61.744%
59	116.264%	116.264%	116.264%	116.264%	61.279%
60	92.629%	92.629%	92.629%	92.629%	60.770%
61	73.198%	73.198%	73.198%	73.198%	60.213%
62	52.862%	52.862%	52.862%	52.862%	52.862%
63	32.211%	32.211%	32.211%	32.211%	32.211%
64	10.852%	10.852%	10.852%	10.852%	10.852%
65	0.000%	0.000%	0.000%	0.000%	0.000%
66	0.000%	0.000%	0.000%	0.000%	0.000%
67	0.000%	0.000%	0.000%	0.000%	0.000%
68	0.000%	0.000%	0.000%	0.000%	0.000%
69	0.000%	0.000%	0.000%	0.000%	0.000%
70	0.000%	0.000%	0.000%	0.000%	0.000%
71	0.000%	0.000%	0.000%	0.000%	0.000%
72	0.000%	0.000%	0.000%	0.000%	0.000%
73	0.000%	0.000%	0.000%	0.000%	0.000%
74	0.000%	0.000%	0.000%	0.000%	0.000%
75	0.000%	0.000%	0.000%	0.000%	0.000%

Figure: 40 TAC §745.37(2)

Child Day-Care Operations	Description of Operation	Type of Permit
(A) Listed Family Home	A caregiver at least 18 years old that provides care in her own home for compensation, for three or fewer children unrelated to the caregiver, birth through 13 years, for at least four hours a day, three or more days a week, and more than nine consecutive weeks. The total number of children in care, including children related to the caregiver, may not exceed 12.	Listing (A caregiver who is subject to regulation as a listed family home may instead become a registered family home.)
(B) Registered Child-Care Home	The primary caregiver provides regular care in the caregiver's own residence for not more than six children from birth through 13 years, and may provide care after school hours for not more than six additional elementary school children. The total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.	Registration
(C) Licensed Child-Care Home	The primary caregiver provides care in the caregiver's own residence for children from birth through 13 years. The total number of children in care varies with the ages of the children, but the total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.	License
(D) Child-Care Center	An operation providing care for seven or more children under 14 years of age for less than 24 hours per day at a location other than the permit holder's home.	License

Figure: 40 TAC §745.37(3)

Residential Child-Care Operations	Description	Type of Permit
(A) Foster Family Home (Independent)	An operation that provides care for six or fewer children up to the age of 18 years.	License
(B) Foster Group Home (Independent)	An operation that provides care for seven to 12 children up to the age of 18 years.	License
(C) Emergency Shelter	An operation that provides short-term care for 13 or more children up to the age of 18 years. Specific time limits vary according to circumstances of services required and age of children. See §720.912 of this title (relating to Admission Policies) for specific time limits and the relevant circumstances.	License
(D) Operation Providing Basic Child Care	An operation that provides care for 13 or more children up to the age of 18 years. The care does not include specialized care programs.	License
(E) Residential Treatment Center	An operation that provides care and treatment for 13 or more emotionally disturbed children up to the age of 18 years.	License
(F) Therapeutic Camp	An operation that provides a camping program for 13 or more children, ages 13 up to the age of 18 years. It is designed to provide an experiential therapeutic environment for children who cannot function in their home school or community.	License
(G) Operation Serving Children With Mental Retardation	An operation that provides care for 13 or more children up to the age of 18 years. The children in care are significantly below average in general intellectual functioning and also have deficits in adaptive behavior.	License
(H) Halfway House	An operation that provides transitional living services for 13 to 24 children, ages 15 up to the age of 18 years. The purpose of this operation is to prepare older children for independent living.	License
(I) Child-Placing Agency (CPA)	A person, agency, or organization other than a parent who places or plans for the placement of a child in an adoptive home or other residential care setting.	License
(J) Maternity Home	An operation that provides care for four or more minor and/or adult women and her children during pregnancy and/or during the six-week postpartum period.	License

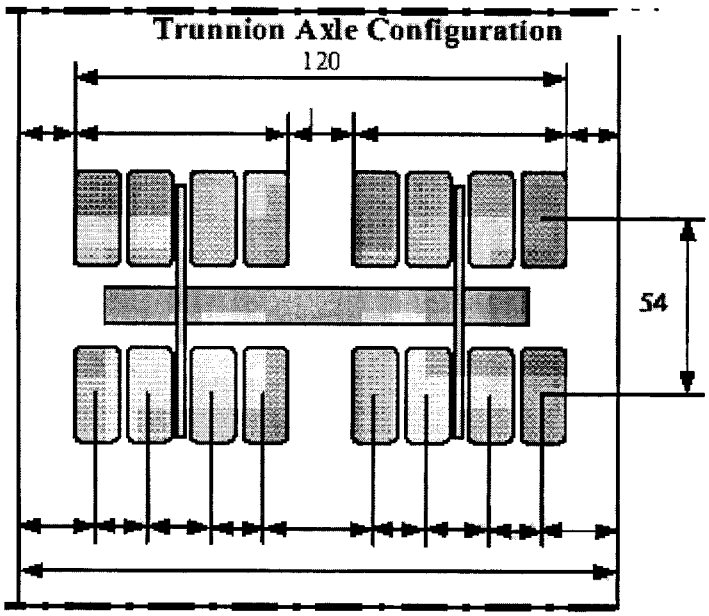
Figure: 40 TAC §745.129

Exempt Miscellaneous Programs	Criteria for Exemption
(1) Neighborhood Recreation Program	(A) The program provides activities designed for recreational purposes for children ages 5-13; (B) The services and activities are not structured to provide after-school child day care; (C) The governing body of the program must adopt standards for care. At a minimum, these standards must include staffing ratios, staff training, and health and safety standards and mechanisms for assessing and enforcing the program's compliance with the standards; (D) The program does not collect compensation for its services; (E) Children participating in the activities are free to join or leave the program at will. If the program provides transportation from school, children may choose whether to use the transportation from school and when to leave the program and walk home without adult supervision; (F) The program must require all parents to sign a statement allowing their children to come and go at will from the program; (G) The program must inform each parent that Licensing does not regulate the operation; (H) The program must provide a process to receive and resolve parental complaints; and (I) The program must conduct criminal background checks for all employees and volunteers who work with children. The background checks must include information from the Department of Public Safety.
(2) Caregiver Has Written Agreement with a Parent to Provide Residential Care	(A) A child may live with someone other than a relative if the non-relative caregiver does not care for more than one child or sibling group; (B) The caregiver had a prior relationship with the child(ren) or family of the child(ren); (C) The caregiver does not receive compensation or solicit donations for the care of the child or sibling group; and (D) The caregiver has a written agreement with the parent to care for the child or sibling.
(3) Emergency Shelter for Minor Mothers	(A) The emergency shelter is providing shelter to minor mothers; (B) The mothers are the sole support of their children; (C) The shelter provides care for the mother and her child(ren) only when there is an immediate danger to the physical health or safety of the mother or her child(ren); and (D) The shelter does not provide care for more than 15 days unless the parent of the minor mother consents, or the minor mother has qualified for Temporary Assistance for Needy Families and is on the waiting list for housing assistance.
(4) Child Placed By DFPS	(A) The caregiver has a longstanding and significant relationship with the child; (B) DFPS is the managing conservator of the child; and (C) DFPS placed the child in the caregiver's home.

Figure: 40 TAC §745.8407

Type of Operation	Inspection	Investigation
(1) Listed Operation	• We do not conduct routine inspections. • We may inspect your operation as part of an investigation.	We investigate when we have received a report: • Of abuse or neglect; or • That the home is caring for four or more unrelated children.
(2) Registered Operation	We inspect: • Prior to the issuance of the registration; • At least once every three years after the issuance of the registration; and • As part of an investigation.	We investigate when we have received a report of: • Alleged abuse or neglect; or • A deficiency in a licensing statute, rule, or minimum standard.
(3) Licensed or Certified Operation	We inspect: • Prior to the issuance of the license or certification; • At least once every year; and • As part of an investigation.	We investigate when we have received a report of: • Alleged abuse or neglect; or • A deficiency in a licensing statute, rule, or minimum standard.
(4) Agency foster and foster group home	• We will periodically inspect a random sample of agency foster homes and agency group homes.	We investigate when we have received a report of: • Alleged abuse or neglect; or • A deficiency in a licensing statute, rule, or minimum standard.

Figure: 43 TAC §28.102(c)(3)(F)(iii)



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Solid Waste Disposal Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water and Health & Safety Codes. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: Settlement Agreement in Harris County, Texas and the State of Texas v. Ricky L. Gandy and Halco Waste Container, Inc., Cause No. 2004-27517, in the 157th Judicial District Court of Harris County, Texas.

Background: The State, on behalf of the Texas Commission on Environmental Quality (TCEQ or Commission), joined in this suit with Harris County to enforce against violations of the Texas Solid Waste Disposal Act at two municipal solid waste facilities in Harris County, Texas. The defendants are Ricky L. Gandy and Halco Waste Container, Inc. The violations arise from Gandy's and Halco's failure to obtain a permit before storing and/or disposing of municipal solid waste and their failure to comply with municipal solid waste regulations adopted pursuant to the Solid Waste Disposal Act at both facilities.

Nature of Settlement: The proposed settlement with Gandy and Halco orders injunctive relief designed to remove all municipal solid waste from the two facilities, and payment of $46,225.80 in attorney's fees to the State of Texas and Harris County. Civil penalties are not assessed because the Harris County District Attorney obtained criminal convictions for the same offenses.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Mary Smith, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200505025
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: November 2, 2005

♦ ♦ ♦

Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Public Safety (DPS), announces the issuance of **Request for Proposals (RFP) #303-6-10143**. TBPC seeks a five year lease of approximately 1,233 square feet of office space in Garland, Dallas, Texas.

The deadline for questions is November 22, 2005 and the deadline for proposals is November 30, 2005 at 3:00 P.M. The award date is January 1, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=61824.

TRD-200504984
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: November 1, 2005

♦ ♦ ♦

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of **Request for Proposals (RFP) #303-6-10464**. TBPC seeks a 5 year lease of approximately 1,802 square feet of office space in the Madisonville area, Madison County, Texas.

The deadline for questions is November 22, 2005, and the deadline for proposals is November 30, 2005 at 3:00 P.M. The award date is March 1, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=61775.

TRD-200504985
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: November 1, 2005

♦ ♦ ♦

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Health & Human Services Commission (HHSC), Department of Family & Protective Services (DFPS), Department of Assistive

and Rehabilitative Services (DARS), Department of Aging & Disability Services (DADS) announces the issuance of **Request for Proposal (RFP) # 303-6-10233**. TBPC seeks a five (5) year or ten (10) year lease of approximately 11,334 square feet of office space in the city of Brownwood, Brown County, Texas.

The deadline for questions is November 21, 2005 and the deadline for proposals is November 29, 2005 at 3:00 P.M. The award date is December 15, 2005.

TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at: http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=61868.

TRD-200504993
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: November 1, 2005

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 21, 2005, through October 27, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on November 2, 2005. The public comment period for these projects will close at 5:00 p.m. on December 2, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Port of Houston Authority; Location: The project site is located in the Houston Ship Channel, at the Woodhouse Terminals and Houston Public Elevator No. 2, across from the Sims Bayou Turning Basin, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Pasadena, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 283274; Northing: 3289781. Project Description: The applicant is requesting authorization to amend Department of the Army (DA) Permit No. 18909(05) to add Rosa Allen, Glendale, and Filterbed Dredge Material Placement Areas for use during authorized dredging activities, and to add silt blade dredging as an approved methodology for ongoing maintenance dredging in the area. CCC Project No.: 06-0031-F1; Type of Application: U.S.A.C.E. permit application #18909(06) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Port of Houston Authority; Location: The project site is located in the Houston Ship Channel, at the CARE Terminals, in Jacintoport, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Pasadena, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 296499; Northing: 3292719. Project Description: The applicant is requesting authorization to amend Department of the Army (DA) Permit No. 17203(08) to add silt blade dredging as an approved methodology for ongoing maintenance dredging of the area. CCC Project No.: 06-0032-F1; Type of Application: U.S.A.C.E. permit application #17203(09) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Steve Mason; Location: The project is located in the Gulf Intracoastal Waterway, at 2147 Canal Drive, in Sargent, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Cedar Lakes West, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 246170; Northing: 3186088. Project Description: The applicant proposes to construct a bulkhead and place approximately 5 cubic yards of fill material into 213 square feet of shallow water habitat, to square off his property and stabilize the shoreline. The applicant also proposes to construct a 20-foot pier with a 24-foot by 10-foot T-head. The terminal end of the pier is proposed in line with the adjacent property owner's bulkhead. CCC Project No.: 06-0033-F1; Type of Application: U.S.A.C.E. permit application #23829 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Tim Beeton; Location: The project is located on an approximate 17.59-acre tract situated north of Teichman Road to Galveston Bay between 91st and 93rd Streets in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 317971; Northing: 3240752. Project Description: The applicant proposes to place sand fill (9,000 cubic yards) into 1.45 acres of transitional wetlands and sand flat for water-view home lots for the development of a low density single family subdivision (18 lots) "Laguna Shores" within a 17.54-acre tract. A total of 15,000 cubic yards of sand would be placed to raise the elevation for lots, however all but 1.45 acres are uplands in this area targeted for lots. The applicant also proposes to construct two shared pier structures each with two boathouses. The two piers and four boathouses would total 3,156 square feet of surface coverage. 1,250 cubic yards of clean concrete riprap would be placed along 1,250 linear feet of shoreline for shoreline stabilization. Three (3) cubic yards of riprap would be placed in the city right-of-way for slope stabilization at the culvert and tidal ditch near 93rd Street and Teichman Road. To compensate for impacts to 1.45 acres of transitional wetlands and sand flat the applicant proposes to: 1) provide limited access to bird sanctuary via conservation easement; 2) enhance existing tidal circulation at the existing 24" diameter culvert on Teichman Road through the removal of 10.0 cubic yards of soil; 3) implement "conservation easement" to protect a 13.6-acre "bird sanctuary" comprised of 12.15 acres of wetlands and 1.45 acres of uplands. The wetland delineation was verified under D-15931 by letter dated 22 September 2004. CCC Project No.: 06-0034-F1; Type of Application: U.S.A.C.E. permit application #23896 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: BOSS Exploration and Production Corporation; Location: in Matagorda Bay within State Tracts (ST's) 94, 96, 104, 150, 169, 170, 175, 178, 179 and 183 within Calhoun and Matagorda Counties. ST's 94, 96 and 104 can be located on the U.S.G.S. quadrangle map entitled: Keller Bay, Texas. ST's 150, 175, 178 and 179 can be located on the U.S.G.S. quadrangle map entitled: Carancahua Pass, Texas. ST's 169, 170 and 183 can be located on the U.S.G.S. quadrangle map entitled: Decros Point, Texas. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Each proposed action under this "blanket" permit requires specific project review and authorization. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. CCC Project No.: 06-0035-F1; Type of Application: U.S.A.C.E. permit application #23935 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200504973
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: October 31, 2005

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period October 2005, as required by Tax Code, §202.058, is $58.80 per barrel for the three-month period beginning on July 1, 2005, and ending September 30, 2005. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of October 2005, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period October 2005, as required by Tax Code, §201.059, is $8.35 per mcf for the three-month period beginning on July 1, 2005, and ending September 30, 2005. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of October 2005, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquires should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200504976
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: October 31, 2005

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, of the Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/07/05 - 11/13/05 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/07/05 - 11/13/05 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005[3] for the period of 11/01/05 - 11/30/05 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 11/01/05 - 11/30/05 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

TRD-200504981
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 1, 2005

♦ ♦ ♦

Texas Education Agency

Request for Applications Concerning Texas Pre-Kindergarten Limited English Proficient (LEP) Pilot Program

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-06-003 from governmental organizations, public nonprofit agencies, or community-based organizations serving three-, four-, and five-year-olds in programs that assure limited English proficient (LEP) children receive appropriate activities to enter school prepared to succeed.

Description. The purpose of the Texas Pre-Kindergarten Limited English Proficient (LEP) Pilot Program is to implement multi-age programs serving three-, four-, and five-year-olds that assure LEP children receive appropriate activities to enter school prepared to succeed. The pilot program must provide many opportunities for the acquisition of English, while supporting the child's first language, including social services, appropriate training and modeling, and research-based curricula and supplies to enhance the development of both languages. Instruction must be in both languages so children can learn concepts in the language they understand while developing their English skills. Programs must include bilingual education specialists and continued professional education to support the teachers.

Dates of Project. The Texas Pre-Kindergarten Limited English Proficient (LEP) Pilot Program will be implemented during the 2005 - 2006 and 2006 - 2007 school years. Applicants should plan for a starting

date of no earlier than February 1, 2006, and an ending date of no later than August 31, 2007.

Project Amount. A total of approximately $1.5 million is available for funding the Texas Pre-Kindergarten Limited English Proficient (LEP) Pilot Program. Each project will receive a maximum of $250,000 for each school year. This project is funded 100 percent from Rider 52 general revenue funds appropriated by the state legislature.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed pilot programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-06-003 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701, by calling (512) 463-9304; by faxing (512) 463-9811; or by e- mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/opge/disc/index.html for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Karen Harmon, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at http://www.tea.state.tx.us/opge/disc/index.html.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Tuesday, December 20, 2005, to be eligible to be considered for funding.

TRD-200505007
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: November 2, 2005

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Employees Retirement System of Texas

Request for Proposal - HSA/HRA/HDHP Study

As authorized by House Bill 2772, 79th Texas Legislature, Regular Session, the Employees Retirement System of Texas ("ERS") is issuing a Request for Proposal ("RFP") for a qualified consultant to conduct a study on the long-term effects of a Health Savings Account/Health Reimbursement Account/High-Deductible Health Plan ("HSA/HRA/HDHP") program under the Texas Employees Group Benefits Program ("GBP"). The contract will begin immediately upon its execution by ERS, and will extend through completion of the services as specified in Article III of the RFP, unless terminated as provided in the contract. The contract expands upon this provision. The consultant shall provide the level of services required in the RFP and meet all other proposal requirements.

The RFP will be available on or after November 16, 2005 from ERS' website. To access the RFP from the website, interested consultants must either fax their request on their company letterhead to the attention of Araceli Garcia at (512) 867-3380, or send their request via email to araceli.garcia@ers.state.tx.us to receive their access code. Either request must include the name of the consultant, street address, phone number, fax number, and email address (if applicable).

To be eligible for consideration, the consultant is required to submit one (1) original sealed proposal with the fully executed contract, signed in blue ink and without amendment or revision, with all required completed exhibits attached, three (3) printed copies of the proposal including all required exhibits, and one (1) additional proposal copied on a CD. All materials must be executed as noted above and must be received by ERS as specified in Article I.B.5. of the RFP.

ERS will base its evaluation and selection of the consultant on factors including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP, experience serving large group programs, past experience with HSA/HRA/HDHP plans, fee proposals and other relevant criteria. Each proposal will be individually evaluated relative to other consultants. Complete specifications will be included with the RFP.

ERS reserves the right to reject any or all proposals and call for new proposals if deemed by ERS to be in the best interests of the GBP and its participants. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFP.

ERS will not pay any costs incurred by any entity in responding to this notice or the RFP or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where ERS deems it to be in the best interest of the GBP and its participants.

TRD-200505011
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: November 2, 2005

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Request for Proposal - TRICARE Supplement

In accordance with Texas Insurance Code, Chapter 1551, the Employees Retirement System of Texas ("ERS") is issuing a Request for Proposal ("RFP") for a qualified carrier to provide TRICARE Supplemental benefits and services throughout Texas under the Texas Employees Group Benefits Program ("GBP"). The carrier shall provide the level of benefits required in the RFP and meet all other proposal requirements.

The RFP will be available in mid-November from ERS' Website. To access the RFP from the Website, interested carriers must either fax their request on their company letterhead to the attention of Araceli (Sally) Garcia at (512) 867-3380, or send their request via email to araceli.garcia@ers.state.tx.us to receive their access code. Either request must include the name of the carrier, street address, phone number, fax number, and email address (if applicable).

To be eligible for consideration, the carrier is required to submit an original and two (2) copies of the proposal in printed format. All materials must be executed as noted above and must be received by ERS as specified in Article I.A.5. of the RFP.

ERS will base its evaluation and selection of a carrier on factors including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP, operating requirements, experience serving large group programs, past experience, administrative quality, rate proposals and other relevant criteria. Each proposal will be individually evaluated relative to other qualified carriers. Complete specifications will be included with the RFP.

ERS reserves the right to reject any or all proposals and call for new proposals if deemed by ERS to be in the best interests of the GBP and its participants. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFP.

ERS will not pay any costs incurred by any entity in responding to this notice or the RFP or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where ERS deems it to be in the best interest of the GBP and its participants.

TRD-200505010
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: November 2, 2005

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Texas Commission on Environmental Quality

Notice of Availability of the October 2005 Draft Update to the Water Quality Management Plan for the State of Texas

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the October 2005 draft Update to the Water Quality Management Plan for the State of Texas (draft WQMP update). The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. The draft WQMP update will contain a description of a Monte Carlo-based method of evaluating loading to the Houston Ship Channel. This method will be an update to the original waste load evaluation for the Ship Channel and assigns a probability distribution based on each permit's discharge data. The Monte Carlo generates waste loads based on each permit's assigned probability distribution and inputs these loads into a water quality model. This model (WLE1-R) determines the probability that water quality criteria will be attained. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, and designated management agency information. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas pollutant discharge elimination system (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. A copy of the October 2005 draft WQMP update may be found on the commission's Web site located at http://www.tnrcc.state.tx.us/permitting/waterperm/wqmp/index.html. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas. Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m., December 12, 2005. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at nvignali@TCEQ.state.tx.us.

TRD-200505029
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 2, 2005

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 335

The Texas Commission on Environmental Quality (TCEQ or commission) will conduct a public hearing to receive comments concerning revisions to 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Chapter 2001, Subchapter B.

A public hearing on this proposal will be held in Austin on November 21, 2005, at 2:00 p.m., at the TCEQ complex in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, agency staff members will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

The proposed rulemaking would implement Senate Bill 1281, 79th Legislature, 2005, and require commercial industrial solid waste management facilities that receive waste for discharge to a publicly owned treatment works to obtain an individual permit issued under Chapter 335 or a general permit issued under 30 TAC Chapter 205.

Persons planning to attend the hearing who have special communication or other accommodation needs, should contact Lola Brown, Office of Legal Services at (512) 239-0348. Requests should be made as far in advance as possible.

Comments may be submitted to Lola Brown, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-045-335-PR. Comments must be received by 5:00 p.m., December 12, 2005. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Lynn Bell, Industrial and Hazardous Waste Permits Division, at (512) 239-6603.

TRD-200504906
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 28, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of October 25, 2005 through October 31, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF AVERY has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 10733-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 124,000 gallons per day. The facility is located on Mill Creek, approximately one-half mile northeast of the City of Avery in Red River County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 71 has applied for a major amendment to TPDES Permit No. WQ0011917001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 1,350,000 gallons per day to an annual average flow not to exceed 2,350,000 gallons per day. The facility is located on the south bank of South Mayde Creek approximately 4,000 feet east of the intersection of Elrod and Morton Roads in Harris County, Texas.

CITY OF JEFFERSON has applied for a renewal of TPDES Permit No. 10801-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 620,000 gallons per day. The facility is located approximately 2,200 feet east of U. S. Highway 59 at the north end of North Line Street in Marion County, Texas.

CITY OF LEFORS has applied for a renewal of TPDES Permit No. 10411-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 1300 feet south of State Highway 273, 2.5 miles west of the intersection of Farm-to-Market Road 291 and State Highway 273 south of the City of Lefors in Gray County, Texas.

LIBERTY CITY WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 11179-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 180,000 gallons per day. The facility is located immediately west of State Highway 135 on the south bank of Rocky Creek in Gregg County, Texas.

MOORE WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 14239-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 65,000 gallons per day. The facility is located on a five-acre tract approximately 2,800 linear feet south and 1,500 linear feet east of the Missouri-Pacific Railroad crossing at 3rd Street in the City of Moore, in Frio County, Texas.

CITY OF PALM VALLEY has applied for a renewal of Permit No. 10972-002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day via surface irrigation of 139.5 acres of golf course land. The wastewater treatment facility and disposal site are located approximately 1,000 feet east of Stuart Place Road (Farm-to-Market Road 3195) and 5,100 feet north of U.S. Expressway 83 in Harlingen, Cameron County, Texas. This permit will not authorize a discharge of pollutants into waters in the State.

CITY OF PASADENA which operates the City of Pasadena Municipal Separate Storm Sewer System (MS4), has applied for a renewal of NPDES Permit No. TXS001701 which authorizes storm water point source discharges to surface water in the state from the City of Pasadena MS4. This permit will be renewed as TPDES Permit No. WQ0004524000. The MS4 is located within the corporate boundary of the City of Pasadena, in Harris County, Texas.

RIVER BEND RESORT, INC. AND VALLEY MUNICIPAL UTILITY DISTRICT NO. 2 has applied for a renewal of Permit No. 11348-002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 115,000 gallons per day via surface irrigation of 42.8 acres of a golf course planted with Bermuda grass. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 4.5 miles northwest of the intersection of State Highway Spur 415 and State Highway 48 in Cameron County, Texas.

SEA LION TECHNOLOGY, INC. which operates an organic chemical manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0003479000, which authorizes the discharge of previously monitored effluents (consisting of utility wastewater and storm water runoff) on an intermittent and flow variable basis via Outfall 001. The facility is located at 5700 Century Boulevard in the City of Texas City, Galveston County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 14267-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 2,000 feet north of the intersection of State Highway 134 and 2198 in Harrison County, Texas.

UNITED INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 13832-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day via public access subsurface drip irrigation system with a minimum application area of 3 acres. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located adjacent to the east side of Espejo-Molina Road, approximately 3.5 miles west of the intersection of U.S. Highway 83 and Espejo-Molina Road, approximately 9.5 miles southwest of the City of Laredo in Webb County, Texas.

UNITED INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. 13832-002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day via subsurface drip irrigation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located at 499 Pena Drive, approximately one mile west-northwest of the intersection of State Highway 83 and Espejo-Molina Road in Webb County, Texas.

Williamson County has applied for a new permit, Proposed Permit No. WQ0014574001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day via surface irrigation of 157 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on the east side of Sam Bass Road (County Road 175), approximately 6,900 feet north of the intersection of Sam Bass Road and Farm-to-Market Road 1431 in Williamson County, Texas.

TRD-200505017
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 2, 2005

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Notice of Water Rights Application

Notices mailed October 26, 2005 through October 28, 2005.

APPLICATION NO. 08-5029A; The Corsicana Country Club, P.O. Box 958, Corsicana, Texas 75151, applicant, seeks to amend Certificate of Adjudication No. 08-5029 pursuant to Texas Water Code 11.122, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Certificate of Adjudication No. 08-5029 authorizes the Corsicana County Club to maintain two existing dams and reservoirs (Reservoir No. 1 and SCS Site No. 136) on two different unnamed tributaries of Briar Creek, tributary of Chambers Creek, tributary of Richland Creek, tributary of the Trinity River, Trinity River Basin. Owner is authorized to divert and use not to exceed 40 acre-feet of water per year from SCS Site No. 136 at a maximum rate of 2.22 cfs (1,000 gpm) from a point immediately downstream of the dam on an unnamed tributary of Briar Creek to maintain Reservoir No. 1 at a constant water level. The owner is also authorized to use the water impounded in Reservoir No. 1 for recreation purposes and to divert and use not to exceed 60 acre-feet per year from the perimeter of Reservoir No. 1 at a maximum rate of 2.69 cfs (1,212 gpm) for agricultural purposes to irrigate 50 acres of land located in the Jacob Allbracket Survey, Abstract 39; the Jonas DeArman Survey, Abstract 212; and the Harvey Homan Survey, Abstract 402, in Navarro County. The owner is further authorized to use the bed and banks of the unnamed tributary of Briar Creek to convey the 40 acre-feet of water from SCS Site No. 136 to the downstream diversion point. Special Condition No. 5D in Certificate of Adjudication No. 08-5029 states that the authorization to divert and use water from SCS Site No. 136 reservoir and diversion of water at the point immediately below the dam shall expire and become null and void on December 31, 2004 or upon termination of the contract dated September 5, 1978 between Corsicana Country Club and B. Lynn Sanders, whichever shall first occur. Multiple priority dates and special conditions apply. Applicant seeks to delete the expiration date of the permit or extend it for another 25-year term, as well as to add agricultural (irrigation) purposes to the 40 acre-feet of water already authorized for diversion from SCS Site No. 136. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and fees were received on December 28, 2004, and additional information on January 20 and March 2, 2005. The application was declared to be administratively complete and accepted for filing with the Office of the Chief Clerk on March 8, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 5914; TXU Mining Company LP (TXU or Applicant), 1601 Bryan Street, Dallas, Texas 75201-3411, seeks a Water Use Permit pursuant to Texas Water Code 11.121 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. TXU seeks authorization to: (a) Maintain two (2) existing reservoirs in the Monticello Lignite Mining Area (LMA) on Smith Creek, tributary of Blundell Creek, tributary of the Big Cypress, Cypress Basin, for domestic and livestock purposes in Titus County; and (b) Divert and use not to exceed 135 acre-feet of water per year from unnamed tributaries of Smith Creek and Blundell Creek for mining purposes (dust suppression and other mining related activities) within the Monticello LMA. Reservoir 1, Pond AR-36, has a surface area of 15.2 acres and impounds 412 acre-feet of water. A point on the centerline of the dam is located N 49.313 W, 16,362 feet from the southwest corner of the Joel Holbert Survey, Abstract No. A-262, also being at Latitude 33.169 N, Longitude 95.091 W, approximately 7.1 miles northwest of the City of Mount Pleasant in Titus County. Reservoir No. 2, Pond F2R-3, has a surface area of 28.1 acres and impounds 766 acre-feet of water. A point on the centerline of the dam is located S 77.942 W, 8,469 feet from the southwest corner of the Joel Holbert Survey, Abstract A-262, also being at Latitude 33.135 N, Longitude 95.079 W, approximately 6.6 miles southwest of the City of Mount Pleasant in Titus County. Ownership of the mining rights in TXU's Monticello LMA is held under multiple mining leases as evidenced by warranty deeds and leases submitted in the application filed with the Texas Railroad Commission and in the Deed Records of Titus County. The water will be diverted at or upstream from seven (7) identified points in the watershed within the boundary of the LMA, at a combined maximum rate not to exceed 6000 gpm (13.4 cfs). The diversion points are located in Titus County. For a complete description of the diversion points, view the complete notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at 512-239-3300 to obtain a copy of the complete notice. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and required fees were received on August 10, 2005 and additional information was received on September 27, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on October 6, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200505016
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 2, 2005

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code

(the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 12, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 12, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: City of Anson; DOCKET NUMBER: 2004-1887-MLM-E; IDENTIFIER: Public Water Supply (PWS) Number 1270001, Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR15A519, Regulated Entity Reference Number (RN) 104174271; LOCATION: Anson, Jones County, Texas; TYPE OF FACILITY: public water supply and city park; RULE VIOLATED: 30 TAC §290.113(b)(1) and (f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level (MCL) for total trihalomethanes (TTHM); and 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR15A519, by failing to submit a Notice of Intent (NOI), by failing to post a copy of the NOI at the park facility construction site, by failing to revise or update the storm water pollution plan, by failing to properly install and maintain sediment control measures, by failing to maintain records documenting dates when major grading activities occurred and dates when construction activities temporarily or permanently ceased, and by failing to maintain records of inspections of disturbed area of the park facility that had not been finally stabilized, areas used for storage that were exposed to precipitation, and structural controls for evidence of, or the potential for, pollutants entering the drainage system; PENALTY: $3,900; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(2) COMPANY: BMB Wood Recycling, Limited; DOCKET NUMBER: 2004-1238-AIR-E; IDENTIFIER: RN104408497; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: wood recycling plant; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(b), by failing to prevent wood dust from the pallet grinding operation from migrating onto adjacent properties; PENALTY: $800; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: BP Products North America Inc.; DOCKET NUMBER: 2004-1027-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 8810, and THSC, §382.085(b), by failing to maintain emission rates of sulfur dioxide (SO_2) and nitrogen oxides below the maximum allowable emission rate and by failing to maintain emission rates of SO_2; 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to determine if an emissions event was reportable and submit the initial emissions event report; and THSC, §382.085(b), by failing to prevent the emission of unauthorized air contaminants; PENALTY: $15,990; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Dallas Woodcraft Company, L.P.; DOCKET NUMBER: 2004-1427-AIR-E; IDENTIFIER: RN100216043; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: wooden frame manufacturing; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the required compliance certification form; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Franklin; DOCKET NUMBER: 2005-0968-MWD-E; IDENTIFIER: RN101917425; LOCATION: Franklin, Robertson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number WQ0010440001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for total suspended solids (TSS), pH, and dissolved oxygen (DO) and by failing to submit the annual sludge report; PENALTY: $7,416; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Garrett Creek Ranch, Inc.; DOCKET NUMBER: 2005-1334-MWD-E; IDENTIFIER: RN101179653; LOCATION: Paradise, Wise County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number 10110003, and the Code, §26.121(a), by failing to comply with permitted effluent limits and by failing to report monitoring results at the intervals specified in the permit; PENALTY: $12,095; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Hilco United Services, Inc. dba Rocky Creek Water System; DOCKET NUMBER: 2005-0089-PWS-E; IDENTIFIER: PWS Number 0180015, RN101451094; LOCATION: near Itasca, Bosque County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.46(f)(2) and (v) and THSC, §341.0315(c), by failing to provide TCEQ investigators with water system records at the time of the investigation and by failing to install all water system electrical wiring in compliance with a local or national electrical code; 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(a), by failing to provide an adequate well capacity of 0.6 gallons per minute per connection; 30 TAC §290.109(c)(2)(A)(iii), by failing to collect samples for bacteriological analysis; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face, self-contained breathing apparatus or supplied air respirator; 30 TAC §290.41(c)(3)(J) and THSC, §341.0315(a), by failing to provide a concrete sealing block; and 30 TAC §290.44(a)(4) and THSC, §341.0315(a), by failing to properly bury all water distribution lines; PENALTY: $1,598; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Iola Independent School District; DOCKET NUMBER: 2005-1333-MWD-E; IDENTIFIER: RN101221620; LOCA-

TION: Iola, Grimes County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 14400001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for DO, TSS, and five-day biochemical oxygen demand (BOD_5); PENALTY: $1,200; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Jeswood Oil Company; DOCKET NUMBER: 2004-2113-PST-E; IDENTIFIER: RN104461298; LOCATION: Lake Dallas, Denton County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: $16,800; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Jimmie Hahn Properties, Limited; DOCKET NUMBER: 2005-1164-IWD-E; IDENTIFIER: RN103727913; LOCATION: Waller, Waller County, Texas; TYPE OF FACILITY: ready-mixed concrete; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES General Permit Number TXG110497, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for TSS and pH and by failing to collect and submit discharge monitoring report parameter flow data; PENALTY: $3,400; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Lake Livingston Water Supply and Sewer Service Corporation; DOCKET NUMBER: 2005-1164-IWD-E; IDENTIFIER: RN103727913; LOCATION: Waller, Waller County, Texas; TYPE OF FACILITY: ready-mixed concrete; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES General Permit Number TXG110497, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for TSS and pH and by failing to collect and submit discharge monitoring report parameter flow data; PENALTY: $3,400; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Lone Star Growers, L.P.; DOCKET NUMBER: 2005-0316-IWD-E; IDENTIFIER: RN102183555; LOCATION: Huntsville, Walker County, Texas; TYPE OF FACILITY: nursery; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0002212000, and the Code, §26.121(a), by failing to comply with permitted effluent limits for ammonia nitrogen and TSS; PENALTY: $3,936; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Loop 360 Water Supply Corporation; DOCKET NUMBER: 2005-1263-PWS-E; IDENTIFIER: RN102672565; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: $323; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(14) COMPANY: Lower Colorado River Authority; DOCKET NUMBER: 2005-1196-PWS-E; IDENTIFIER: RN101240745; LOCATION: near Matagorda, Matagorda County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the MCL for TTHM and haloacetic acid (HAA5); PENALTY: $635; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Michael Manders; DOCKET NUMBER: 2005-1556-LII-E; IDENTIFIER: RN103416301; LOCATION: Allen, Collin County, Texas; TYPE OF FACILITY: landscaping business; RULE VIOLATED: 30 TAC §30.5(a) and (b) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license; PENALTY: $375; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: City of Martindale; DOCKET NUMBER: 2005-0603-MWD-E; IDENTIFIER: Water Quality (WQ) Permit Number 0013450001, RN101521268; LOCATION: Martindale, Caldwell County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(5) and §317.4(k) and WQ Permit Number 0013450001, by failing to maintain and operate the lagoons in a manner to achieve optimum efficiency of treatment capability, by failing to maintain a minimum of two feet of freeboard, and by failing to prevent an unauthorized discharge of wastewater; PENALTY: $7,040; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(17) COMPANY: Matagorda County Water Control and Improvement District Number 2; DOCKET NUMBER: 2005-0755-PWS-E; IDENTIFIER: RN101408201; LOCATION: near Sargent, Matagorda County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(iii) and THSC, §341.0315(c), by failing to provide two or more pumps having a total capacity of two gallons per minute (gpm) per connection; 30 TAC §290.46(d)(2)(A), (j), (m), and (t), and §290.110(b)(4), by failing to maintain a minimum residual disinfectant concentration of 0.2 milligrams per liter (mg/L) free chlorine, by failing to complete customer service inspection certificates, by failing to ensure the good working condition of the system's facilities and equipment, and by failing to post legible system ownership signs; 30 TAC §290.44(d)(4) and (f)(2), by failing to provide accurate metering devices and by failing to properly install distribution lines; 30 TAC §290.43(d), by failing to equip the air injection lines with filters to prevent compressor lubricants and other contaminants from entering the pressure tanks; 30 TAC §290.41(c)(3)(A) and (O), by failing to submit well completion data before placing the well into service and by failing to protect the well unit with an intruder-resistant fence; and 30 TAC §290.121(a), by failing to maintain a microbiological monitoring plan; PENALTY: $1,134; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: City of Newark; DOCKET NUMBER: 2005-0488-PWS-E; IDENTIFIER: PWS Number 2490008, RN101388536; LOCATION: Newark, Wise County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and (f)(1) and THSC, §341.0315(c), by failing to provide the minimum well capacity of 0.6 gpm per connection and by failing to provide a copy of the water purchase contract to the executive director; 30 TAC §290.46(d)(2)(A), (f)(3)(A)(iii), (i), (m)(1)(B), (n)(3), and (u), and §290.111(e), and THSC, §341.0315(c), by failing to maintain a minimum free chlorine residual of 0.2 mg/L throughout the distribution system, by failing to maintain copies of the customer service inspection reports, by failing to maintain records of the date, location, and nature of water quality, pressure, or outage complaints, by failing to maintain adequate monthly operating reports, by failing to adopt an adequate plumbing ordinance, regulations, or service agreement, by failing to annually inspect all pressure tanks, by failing to initiate a

maintenance program, by failing to maintain, on file, at the public water system a copy of the well completion data, and by failing to submit test results for showing that an abandoned well is in a nondeteriorated condition; 30 TAC §290.42(e)(3)(D) and (l), by failing to provide facilities to determine the amount of disinfectant remaining for use and by failing to compile and keep up-to-date a thorough plant operations manual; 30 TAC §290.41(c)(3)(B), by failing to provide a well casing that extends a minimum of 18 inches above the elevation of the finished floor of the pump room; 30 TAC §290.43(e), by failing to ensure that all potable water storage tanks and pressure maintenance facilities are enclosed by an intruder-resistant fence with lockable gates; and 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; PENALTY: $1,302; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Nisseki Chemical Texas Inc.; DOCKET NUMBER: 2005-1308-AIR-E; IDENTIFIER: RN102887270; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 19624, and THSC, §382.085(b), by failing to prevent an avoidable emissions event; PENALTY: $5,600; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Ozdo, Inc. dba Star Food Mart; DOCKET NUMBER: 2005-1390-PST-E; IDENTIFIER: RN102355500; LOCATION: Amarillo, Randall County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $2,520; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(21) COMPANY: Rhino Linings of South Texas, Inc.; DOCKET NUMBER: 2005-0767-AIR-E; IDENTIFIER: RN104394663; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: autobody refinishing shop; RULE VIOLATED: 30 TAC §116.110(a)(4) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a new source review permit; PENALTY: $840; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(22) COMPANY: Rhodia, Inc.; DOCKET NUMBER: 2005-1288-PWS-E; IDENTIFIER: RN100215177; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: $325; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Sultan Enterprises, Inc. dba Stop-N-Drive 27; DOCKET NUMBER: 2005-0680-PST-E; IDENTIFIER: RN102435997; LOCATION: Groves, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(J) and (L) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain and produce all current Stage II records; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the underground storage tank (UST) is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to monitor the piping of the UST system; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $7,560; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: Tawakoni Waste Water Corporation; DOCKET NUMBER: 2005-0598-MWD-E; IDENTIFIER: RN103014973; LOCATION: Quinlan, Hunt County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 14297001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for TSS, DO, BOD_5, pH, and total residual chlorine and by failing to submit the annual sludge report; PENALTY: $4,640; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Texas Conference Association of Seventh-Day Adventists; DOCKET NUMBER: 2005-1420-PWS-E; IDENTIFIER: RN101193019; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: camping complex; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to collect and submit monthly water samples for bacteriological analysis; and 30 TAC §290.122(c)(2)(A), by failing to provide public notification for the failure to collect water samples; PENALTY: $6,338; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(26) COMPANY: Town of Quintana; DOCKET NUMBER: 2005-1100-PWS-E; IDENTIFIER: RN101242907; LOCATION: Quintana, Brazoria County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the MCL for TTHM and HAA5; PENALTY: $635; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200504982
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 1, 2005

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Health and Human Services Commission (HHSC) will conduct a public hearing to receive public comment on proposed Medicaid Hospice per day payment rates for routine home, continuous home, inpatient respite, and general inpatient care. The Medicaid Hospice program is operated by the Department of Aging and Disability Services (DADS). These payment rates are proposed to be effective October 1, 2005. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC), Part 15, Chapter 355, §355.105(g), which requires public hearings on proposed payment rates. The public hearing will be held on November 17, 2005, at 9:00 a.m. in the Lone Star Meeting Room #1047 of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, HHSC Rate Analysis, P.O. Box 85200, MC H-400, Austin, Texas 78708-5200. Express mail can be sent, or written comments can be hand delivered, to Mr. Arreola, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 491-1998. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Tony Arreola by telephone at (512) 491-1358.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Tony Arreola by November 15, 2005, so that appropriate arrangements can be made.

Methodology and justification. The proposed rates were adjusted in accordance with the Code of Federal Regulations at 42 C.F.R. §418.306(c). This regulation requires hospice rates to be adjusted annually by a wage index that is published annually in the *Federal Register*. The "Hospice Wage Index for Fiscal Year 2006," which specifies the adjusted hospice rates for federal fiscal year 2006, was published in the *Federal Register* on August 4, 2005. The federal fiscal year 2006 hospice rate adjustments are effective from October 1, 2005 through September 30, 2006.

TRD-200504943
Elizabeth LaMair
Assistant General Counsel
Texas Health and Human Services Commission
Filed: October 31, 2005

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Public Notice of Intent

The Texas Health and Human Services Commission (HHSC) announces its intent to submit to the Centers for Medicare and Medicaid Services, Transmittal Number-05-011, Amendment Number 708, an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The amendment provides for Upper Payment Limit supplement reimbursement for Medicaid inpatient and outpatient hospital services provided by privately owned hospitals with an indigent care affiliation agreement with a hospital district or other local government entity. The supplemental payments shall not exceed the difference between the total annual Medicaid payments and the federal upper payment limits established in 42 C.F.R. §447.272. As a result, the State seeks to ensure that Medicaid payments to private hospitals are commensurate with Medicate payments and/or payment principles.

The proposed amendment is to be effective November 12, 2005, and is expected to increase the amount of federal matching to the State. The proposed amendment is estimated to result in increased annual expenditures of $426,413,000 with increased federal matching funds of $258,662,000 for State Fiscal Year 2006, and $503,931,000 with increased federal matching funds of $304,977,000 for State Fiscal Year 2007.

For information, please contact Arnulfo Gomez, Policy Analyst at (512) 491-1166 or arnulfo.gomez@hhsc.state.tx.us.

TRD-200505018
Elizabeth LaMair
Assistant General Counsel
Texas Health and Human Services Commission
Filed: November 2, 2005

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Beaumont	Sartomer Company Inc.	L05937	Beaumont	00	10/18/05
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	00	10/28/05
Groesbeck	South Limestone Hospital District DBA Limestone Medical Center	L05932	Groesbeck	00	10/18/05
McKinney	Complete Heart Care PA	L05935	McKinney	00	10/24/05
Midland	RAM Kolluru MD PA	L05933	Midland	00	10/19/05
Mission	Baaxten Imaging Center LLC	L05941	Mission	00	10/17/05
Stafford	Amar Diagnostics & Imaging LLC	L05934	Stafford	00	10/24/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Andrews	Waste Control Specialist LLC	L04971	Andrews	37	10/24/05
Arlington	Open Imaging Arlington LLC DBA Arlington Medical Imaging LLC	L05575	Arlington	04	10/31/05
Austin	Reinhart & Associates Inc	L03189	Austin	41	10/21/05
Austin	Seton Medical Center Risk Management Dept	L02896	Austin	84	10/26/05
Austin	St David's Healthcare Partnership LPLLP DBA North Austin Medical Center	L04910	Austin	55	10/28/05
Barker	Kooney X-ray Inc.	L01074	Barker	99	10/19/05
Beasley	Hudson Products Corporation	L02370	Beasley	43	10/20/05
Beaumont	Applied Standards Inspection Inc.	L03072	Beaumont	91	10/18/05
Beaumont	Christus Health Southeast Texas DBA Christus Hospital – St Elizabeth	L00269	Beaumont	101	10/28/05
Beaumont	Christus St Elizabeth Hospital DBA St Elizabeth Hospital	L00269	Beaumont	100	10/24/05
Beaumont	Metalforms Inc	L02261	Beaumont	33	10/18/05
Channelview	Enpro Systems LTD	L04990	Channelview	18	10/20/05
Channelview	Phoenix Non Destructive Testing Co Inc.	L04454	Channelview	44	10/20/05
Conroe	Drilling Specialties Company	L04825	Conroe	09	10/20/05
Corpus Christi	Escot NDE Inc DBA Basin Industrial X-Ray	L05002	Corpus Christi	22	10/24/05
Corpus Christi	Wilson Inspection X-Ray Services Inc	L04469	Corpus Christi	51	10/24/05
Dallas	Baylor University Medical Center	L01290	Dallas	76	10/25/05
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	158	10/21/05
Dallas	Texas Hematology/Oncology Center PA DBA Patients Comprehensive Cancer Center	L05397	Dallas	10	10/20/05
Dallas	Texas Oncology PA DBA Sammons Cancer Center	L04878	Dallas	28	10/20/05
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	01	10/31/05
Deer Park	Total Petrochemicals USA Inc.	L00302	Deer Park	46	10/17/05
Denton	Texas Woman's University	L00304	Denton	55	10/31/05
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	66	10/25/05
El Paso	Texas Oncology PA DBA El Paso Cancer Treatment Center	L05774	El Paso	02	10/27/05
Fort Worth	Baylor All Saints Medical Center	L02212	Fort Worth	68	10/28/05
Fort Worth	Baylor Medical Center City View DBA All Saints City View Hospital	L04105	Fort Worth	22	10/28/05

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Fort Worth	Fort Worth Heart PA	L05480	Fort Worth	16	10/14/05
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	54	10/31/05
Freeport	Brazos Pipe & Steel Fabricators Inc.	L02186	Freeport	23	10/19/05
Gonzales	KI4U Inc	L05515	Gonzales	03	10/24/05
Henrietta	Clay County Memorial Hospital	L03228	Henrietta	20	10/28/05
Houston	Allied Testing Laboratories	L00880	Houston	40	10/19/05
Houston	Baker Hughes Oilfield Operations Inc DBA Baker Atlas Houston Tech Center	L04452	Houston	41	10/24/05
Houston	Ben Taub General Hospital Nuclear Medicine	L01303	Houston	60	10/28/05
Houston	Cardinal Health	L01911	Houston	127	10/18/05
Houston	D-Arrow Inspection Inc.	L03816	Houston	77	10/20/05
Houston	Gulf Coast Cancer Center	L05185	Houston	07	10/25/05
Houston	Memorial Hermann Hospital DBA Memorial Hospital Southwest	L00439	Houston	106	10/25/05
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	87	10/25/05
Houston	Northwest Cardiology Consultants PA	L05795	Houston	04	10/24/05
Houston	Nuclear Sources & Services Inc DBA NSSI/Sources & Services Inc	L01811	Houston	47	10/24/05
Houston	Park Plaza Hospital	L01812	Houston	19	10/19/05
Houston	Real Inspection Training Engineering	L05136	Houston	14	10/20/05
Houston	Rice Nuclear Diagnostics	L05830	Houston	05	10/28/05
Houston	Sisters of Charity of the Incarnate Word DBA St Joseph Hospital	L02279	Houston	58	10/21/05
Houston	Spectracell Laboratories Inc.	L04617	Houston	08	10/20/05
Houston	Stork Southwestern Laboratories Inc.	L00299	Houston	123	10/19/05
Houston	Tuboscope Vetco International Inc	L05302	Houston	01	10/21/05
Irving	Baylor Medical Center at Irving DBA Irving Healthcare System	L02444	Irving	57	10/21/05
Irving	Baylor Medical Center at Irving DBA Irving Healthcare System	L02444	Irving	58	10/31/05
Irving	Cor Specialty Associates of North Texas PA	L05373	Irving	09	10/26/05
Katy	Memorial Hermann Hospital System DBA Memorial Hermann Katy Hospital	L03052	Katy	40	10/24/05
Katy	Physicians Empowerment Group LLC	L05876	Katy	01	10/19/05
Katy	St. Catherine Health & Wellness Center Radiology Department	L05310	Katy	09	10/17/05
Kilgore	Laird Memorial Hospital DBA Laird Memorial Hospital	L03496	Kilgore	20	10/25/05
La Porte	J V Industrial Co LTD	L05785	La Porte	04	10/21/05
Lake Jackson	Non Destructive Inspection Corporation	L02712	Lake Jackson	122	10/20/05
Lufkin	Temple Imaging Center	L05839	Lufkin	02	10/20/05
Mauriceville	S&T International Inc	L03652	Mauriceville	33	10/18/05
McAllen	Valley Nuclear Incorporated	L04521	McAllen	21	10/26/05
Mesquite	Texas Oncology PA DBA Texas Cancer Center Mesquite	L05741	Mesquite	02	10/17/05
Mont Belvieu	Eagle X-Ray	L03246	Mont Belvieu	88	10/20/05
N. Richland Hls	Columbia North Hills Hospital Subsidiary LP DBA North Hills Hospital	L02271	N. Richland Hls	49	10/25/05
Nacogdoches	Nacogdoches Medical Center	L02853	Nacogdoches	36	10/19/05
New Braunfels	Cancer Center Network of South Texas PA	L05717	New Braunfels	05	10/21/05
Odessa	Desert Industrial X-Ray LP	L04590	Odessa	44	10/24/05
Odessa	Pro Inspection Inc	L03906	Odessa	18	10/24/05
Pasadena	Celanese LTD Clear Lake Plant	L01130	Pasadena	61	10/20/05
Pasadena	Conam Inspection & Engineering Inc.	L05010	Pasadena	98	10/20/05
Pasadena	Fugro Consultants LP	L04322	Pasadena	79	10/20/05

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Plano	Dallas Cardiology Associates DBA HeartPlace Plano	L05699	Plano	03	10/09/05
Richmond	Matrix Metals LLC DBA Richmond Foundry	L00312	Richmond	45	10/19/05
San Angelo	Hirschfeld Steel Company	L04361	San Angelo	14	10/24/05
San Antonio	Accord Medical Management LP DBA Nix Health Care System	L03531	San Antonio	24	10/19/05
San Antonio	Christus Santa Rosa Healthcare System LP	L02237	San Antonio	85	10/28/05
San Antonio	CTRC Clinical Foundation	L01922	San Antonio	79	10/17/05
San Antonio	Endocrinology Nuclear Medicine Assoc. PA	L03343	San Antonio	14	10/31/05
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	209	10/09/05
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	210	10/20/05
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	211	10/25/05
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	212	10/27/05
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	213	10/28/05
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L04305	San Antonio	34	10/17/05
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L04305	San Antonio	35	10/27/05
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L04927	San Antonio	22	10/17/05
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L04927	San Antonio	23	10/27/05
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L05358	San Antonio	20	10/17/05
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L05358	San Antonio	21	10/27/05
San Antonio	Trinity University Dept of Biology	L01668	San Antonio	39	10/27/05
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	147	10/24/05
Texas City	Innovene USA LLC	L00354	Texas City	31	10/26/05
Texas City	Marathon Petroleum LLC	L04431	Texas City	20	10/27/05
Wadsworth	STP Nuclear Operating Company	L04222	Wadsworth	18	10/20/05
Wichita Falls	North Texas Surgical Center	L05847	Wichita Falls	01	10/25/05
Woodlands	Memorial Hospital the Woodlands	L03772	Woodlands	43	10/25/05
Throughout Tx	Team Cooperheat-MQS Inc. DBA Cooperheat-MQS	L00087	Alvin	131	10/18/05
Throughout Tx	Global X-Ray & Testing Corp	L03663	Aransas Pass	95	10/24/05
Throughout Tx	John E Hearne	L05174	Asherton	02	10/21/05
Throughout Tx	Radiation Technology Inc	L04633	Austin	21	10/24/05
Throughout Tx	Ramming Paving Co LTD	L04666	Austin	05	10/19/05
Throughout Tx	Tx Dept of State Health Services Community Preparedness Section	L05865	Austin	01	10/24/05
Throughout Tx	Tx Dept of Transportation Construction Division Materials & Pavements Sect.	L00197	Austin	110	10/31/05
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	36	10/18/05
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	37	10/28/05
Throughout Tx	Brazos Valley Inspection Services Inc	L02859	Bryan	47	10/21/05
Throughout Tx	NDE Solutions LLC	L05879	Bryan	03	10/21/05
Throughout Tx	Chappell Hill Logging Systems Inc	L05374	Chappell Hill	04	10/24/05
Throughout Tx	Berry Fabricators	L01575	Corpus Christi	48	10/24/05
Throughout Tx	N-Spec Quality Services Inc	L05113	Corpus Christi	24	10/24/05
Throughout Tx	Star-Jet Services Inc	L02214	Corpus Christi	18	10/24/05
Throughout Tx	Wilson Inspection X-Ray	L04469	Corpus Christi	52	10/27/05
Throughout Tx	Siemens Medical Solutions USA Inc	L05884	Dallas	01	10/24/05
Throughout Tx	GK Techstar LLC	L05562	Deer Park	04	10/24/05
Throughout Tx	Jaime Rojas DBA COC Testing & Engineering	L05802	El Paso	02	10/20/05

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	The Dow Chemical Company Texas Operations	L00451	Freeport	79	10/24/05
Throughout Tx	General Inspection Services Inc.	L02319	Hempstead	38	10/19/05
Throughout Tx	Aitec USA Inc	L05718	Houston	13	10/21/05
Throughout Tx	Baker Hughes Oilfield Operations Inc. DBA Baker Atlas	L00446	Houston	158	10/19/05
Throughout Tx	Earth Engineering Inc	L05206	Houston	03	10/19/05
Throughout Tx	H&G Inspection Company Inc. DBA Statewide Maintenance Company	L02181	Houston	204	10/19/05
Throughout Tx	H&G Inspection Company Inc. DBA Statewide Maintenance Company	L02181	Houston	205	10/26/05
Throughout Tx	Halliburton Energy Services Inc	L03284	Houston	30	10/24/05
Throughout Tx	Halliburton Energy Services Inc.	L00442	Houston	104	10/19/05
Throughout Tx	Halliburton Energy Services Inc.	L02113	Houston	105	10/19/05
Throughout Tx	Houston City of Dept of Hlth & Hmn Svcs	L00149	Houston	70	10/19/05
Throughout Tx	HVJ Associates Inc	L03813	Houston	28	10/27/05
Throughout Tx	Mandes Inspection & Testing Services Inc.	L05220	Houston	55	10/20/05
Throughout Tx	Material Inspection Technology Inc	L05672	Houston	15	10/21/05
Throughout Tx	Metco	L03018	Houston	156	10/20/05
Throughout Tx	Nuclear Scanning Services Inc	L04339	Houston	18	10/24/05
Throughout Tx	Oceaneering International Inc.	L04463	Houston	39	10/20/05
Throughout Tx	P L P S Inc.	L04955	Houston	04	10/20/05
Throughout Tx	Pathfinder Energy Services Inc.	L05236	Houston	11	10/20/05
Throughout Tx	Petrochem Inspection Services Inc.	L04460	Houston	65	10/20/05
Throughout Tx	Professional Service Industries Inc	L00203	Houston	115	10/18/05
Throughout Tx	Protechnics Division of Core Labs LP	L03835	Houston	46	10/20/05
Throughout Tx	Radiographic Specialists Inc.	L02742	Houston	47	10/20/05
Throughout Tx	Superior Energy LLC	L05540	Houston	06	10/21/05
Throughout Tx	Testmasters Inc.	L03651	Houston	22	10/20/05
Throughout Tx	Tracerco/Synetix Services - A Business Unit of Johnson Matthey Inc	L03096	Houston	57	10/24/05
Throughout Tx	Varo LP	L00287	Houston	117	10/18/05
Throughout Tx	Weatherford US LP	L05291	Houston	09	10/21/05
Throughout Tx	Wood Group Logging Services Inc.	L05262	Houston	15	10/20/05
Throughout Tx	Goolsby Testing Laboratories Inc.	L03115	Humble	78	10/20/05
Throughout Tx	Perf-O-Log Inc	L05478	Iowa Colony	12	10/21/05
Throughout Tx	MDS Nordion Inc	L00721	Kanata, Canada	48	10/24/05
Throughout Tx	Texas Perforators Inc	L05086	Kingsville	08	10/21/05
Throughout Tx	Acuren Inspection Inc.	L01774	La Porte	216	10/19/05
Throughout Tx	Gamma Surveys LLC	L05155	La Porte	10	10/24/05
Throughout Tx	Southern Services Inc DBA Southern Technical Services DBA Bix Testing Laboratories	L05270	Lake Jackson	42	10/21/05
Throughout Tx	Master Industries Inc	L05872	Liberty	02	10/21/05
Throughout Tx	American Surveys Inc.	L02086	Manvel	12	10/19/05
Throughout Tx	Capitan Corporation	L05824	Midland	02	10/24/05
Throughout Tx	L J Wireline Service	L05085	Midland	03	10/24/05
Throughout Tx	Precision Energy Services Inc	L04405	Midland	16	10/24/05
Throughout Tx	Solum Engineering Inc	L05770	Missouri City	03	10/28/05
Throughout Tx	Anatec Inc	L04865	Nederland	63	10/18/05
Throughout Tx	Turner Specialty Services Inc	L05417	Nederland	16	10/18/05
Throughout Tx	Apollo Perforators Inc	L03020	Odessa	15	10/24/05
Throughout Tx	Big State X-Ray	L02693	Odessa	45	10/21/05
Throughout Tx	Black Warrior Wireline Corp	L04473	Odessa	20	10/24/05
Throughout Tx	Desert Industrial X-Ray LP	L04590	Odessa	45	10/25/05
Throughout Tx	Sivalls Inc	L02298	Odessa	33	10/21/05
Throughout Tx	T C Inspection Inc	L05833	Oyster Creek	07	10/21/05

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Celanese LTD	L04210	Pampa	18	10/27/05
Throughout Tx	NDS Products Inc	L00991	Pasadena	42	10/24/05
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	58	10/17/05
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	59	10/21/05
Throughout Tx	Coastal Wireline Services Inc.	L04239	Pearland	09	10/20/05
Throughout Tx	Royal Wireline Inc	L03110	Riviera	24	10/24/05
Throughout Tx	Plant and Pipeline Inspection Inc	L05746	Rockport	08	10/24/05
Throughout Tx	PHC Wireline Inc	L05911	San Angelo	01	10/24/05
Throughout Tx	All American Inspection Inc	L01336	San Antonio	54	10/21/05
Throughout Tx	Ruiz Testing Services Inc	L04948	San Antonio	13	10/21/05
Throughout Tx	E M Hobbs LP	L05738	Sonora	06	10/24/05
Throughout Tx	GCT Inspection Inc.	L02378	South Houston	87	10/20/05
Throughout Tx	Schlumberger Technology Corporation	L00109	Sugar Land	49	10/18/05
Throughout Tx	Blazer Inspection Inc	L04619	Texas City	38	10/20/05
Throughout Tx	Blazer Inspection Inc	L04619	Texas City	39	10/21/05
Throughout Tx	Industrial Fabricators Inc.	L04935	Texas City	18	10/20/05
Throughout Tx	CB&I Constructors Inc	L01902	The Woodlands	66	10/19/05
Throughout Tx	K & N Perforators Inc	L02300	Victoria	26	10/21/05
Throughout Tx	Lamco & Associate	L05152	Woodlands	05	10/20/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Numed Diagnostic Imaging	L02129	Denton	57	10/26/05
Throughout Tx	City of Fort Worth Dept of Engineering Soil Laboratory	L01928	Fort Worth	19	10/20/05
Throughout Tx	Lubbock Labs	L01558	Lubbock	13	10/19/05
Throughout Tx	Diabetes Center of the Southwest	L03238	Midland	13	10/28/05
Throughout Tx	Cottons Inspection Service Inc	L02869	Odessa	16	10/20/05
Throughout Tx	Lamco & Associate	L05152	Woodlands	06	10/21/05

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Lawrence	General Welding Works Inc.	L02895	Lawrence	44	10/18/05
Mineral Wells	MW Inspection	L04494	Mineral Wells	09	10/20/05
Waco	Waco Radiology Clinic PA	L05324	Waco	05	10/20/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200505027
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 2, 2005

♦ ♦ ♦

Notice of Amendment to the Texas Schedules of Controlled Substances adding Zopiclone to Schedule IV and Pregabalin to Schedule V

The Deputy Administrator of the Drug Enforcement Administration (DEA) issued two final rules, one on April 4, 2005, in the Federal Register, Volume 70, Number 63; and, one on July 28, 2005, in the Federal Register, Volume 70, Number 144, placing the substances zopiclone, including it's salts, isomers, and salts of isomers, and pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid], including its salts, and all products containing pregabalin, into Schedule IV and Schedule V respectively of the Federal Controlled Substances Act (CSA). These actions were based on the following:

Zopiclone

(1) Zopiclone is a central nervous system depressant drug with a low potential for abuse relative to the drugs or other substances in Schedule III;

(2) Zopiclone has a currently accepted medical use in treatment in the United States; and

(3) Abuse of zopiclone may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

Pregabalin

(1) Pregabalin is a prescription drug product for the management of neuropathic pain, and has a low potential for abuse relative to the drugs or other substances in Schedule IV;

(2) Pregabalin has a currently accepted medical use in treatment in the United States; and

(3) Abuse of pregabalin may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule IV.

Pursuant to §481.034(g), as amended by the 75th Legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least 31days have expired since notice of the above referenced actions was published in the Federal Register. On October 10, 2005, Eduardo J. Sanchez, M.D., M.P.H., in his capacity as Commissioner of the Department of State Health Services, ordered this amendment to the Texas Controlled Substances Act, to be effective 21 days following publication of this notice in the *Texas Register*, ordered the substance zopiclone, including it's salts, isomers, and salts of isomers be added to Schedule IV, and the substance pregabalin, including its salts and all products containing pregabalin, be added to Schedule V of the Texas Controlled Substances Act. Schedule IV and Schedule V of said Act are hereby amended to read as follows:

SCHEDULE IV

Schedule IV consists of:

Schedule IV depressants

except as provided by the Texas Controlled Substances Act, Health and Safety Code, §481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Alprazolam;

(2) Barbital;

(3) Bromazepam;

(4) Camazepam;

(5) Chloral betaine;

(6) Chloral hydrate;

(7) Chlordiazepoxide;

(8) Clobazam;

(9) Clonazepam;

(10) Clorazepate;

(11) Clotiazepam;

(12) Cloxazolam;

(13) Delorazepam;

(14) Diazepam;

(15) Dichloralphenazone;

(16) Estazolam;

(17) Ethchlorvynol;

(18) Ethinamate;

(19) Ethyl loflazepate;

(20) Fludiazepam;

(21) Flunitrazepam;

(22) Flurazepam;

(23) Halazepam;

(24) Haloxazolam;

(25) Ketazolam;

(26) Loprazolam;

(27) Lorazepam;

(28) Lormetazepam;

(29) Mebutamate;

(30) Medazepam;

(31) Meprobamate;

(32) Methohexital;

(33) Methylphenobarbital (mephobarbital);

(34) Midazolam;

(35) Nimetazepam;

(36) Nitrazepam;

(37) Nordiazepam;

(38) Oxazepam;

(39) Oxazolam;

(40) Paraldehyde;

(41) Petrichloral;

(42) Phenobarbital;

(43) Pinazepam;

(44) Prazepam;

(45) Quazepam;

(46) Temazepam;

(47) Tetrazepam;

(48) Triazolam;

(49) Zaleplon;

(50) Zolpidem; and

*(51) Zopiclone, its salts, isomers, and salts of isomers.

Schedule IV stimulants

(No change.)

Schedule IV narcotics

(No change.)

Schedule IV other substances

(No change.)

SCHEDULE V

Schedule V consists of:

Schedule V narcotics containing non-narcotic active medicinal ingredients

(No change.)

Schedule V stimulants

(No change.)

Schedule V depressants*

Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts.

(1) Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid]

Changes to the schedules are designated by an asterisk (*)

TRD-200505002
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 1, 2005

♦ ♦ ♦

Notice of Emergency Cease and Desist Order on Nova Healthcare Management, LLP, dba Nova Healthcare Centers

Notice is hereby given that the Department of State Health Services (department) ordered Nova Healthcare Management, LLP, doing business as Nova Healthcare Centers (registrant: R20310-005) of Houston to cease and desist using the Universal x-ray unit until the entrance exposure radiation level is within regulatory limits.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505003
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 1, 2005

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Notice of Emergency Cease and Desist Order on Texas Managed, Inc., dba Texas Urgent Care

Notice is hereby given that the Department of State Health Services (department) ordered Texas Managed Inc., doing business as Texas Urgent Care (registrant: R28893-000) of Houston to cease and desist using the General Electric x-ray unit until the entrance exposure radiation level is within regulatory limits.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505004
Cathy Campbell
General Counsel
Department of State Health Services
Filed: November 1, 2005

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Texas Higher Education Coordinating Board

Notice of Contract Award

Pursuant to Chapter 2254, Chapter B, the Texas Higher Education Coordinating Board (Coordinating Board) announces this notice of contract award for bond and program counsel.

The notice of request for qualifications was published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4366).

The bond and program counsel will provide legal advice and assistance to the Texas Higher Education Coordinating Board regarding the issuance of bonds and on issues regarding the loan program.

The contract was awarded to Vinson & Elkins, L.L.P. c/o Jerry E. Turner, 2801 Via Fortuna, Suite 100, Austin, Texas 78746-7568.

The term of the contract is September 30, 2005 through August 31, 2006.

TRD-200504983
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: November 1, 2005

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Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council is soliciting qualified organizations to assist The WorkSource in providing service to individuals affected by Hurricane Katrina and Rita. **H-GAC is extending the deadline to submit proposals for Hurricane Projects RFP until 5:00 p.m. Thursday, November 10, 2005.** The original due date was Thursday, October 27, 2005. We encourage interested bidders to submit proposals before the deadline. A proposal package is available for download at **http://theworksource.org/4contractor/rfp.html and http://h-gac.com**. Hard copies of the proposal package are also available. There is not a bidder's conference for this procurement. Mailed

proposals must be postmarked no later than Tuesday, November 7, 2005. H-GAC will not accept late proposals; we will make no exceptions. Prospective bidders may contact Carol Kimmick at (713) 627-3200 or ckimmick@theworksource.org or visit the web site to request a proposal package.

TRD-200504875
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: October 27, 2005

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Request for Proposals

The Houston-Galveston Area Council solicits qualified organizations to assist The WorkSource in providing service to individuals affected by Hurricane Katrina and Hurricane Rita. The purpose of this solicitation is to select qualified training providers to offer short-term skills training that prepares graduates to go to work in clean-up and rebuilding activities in storm-damaged areas of east and south east Texas, western Louisiana, and the New Orleans metropolitan area. We are soliciting training that will be offered only to evacuees from storm-damaged areas. A proposal package is available for download at **http://theworksource.org/4contractor/rfp.html and http://h-gac.com**. Hard copies of the proposal package are also available. There is not a bidder's conference for this procurement. Proposals are due at H-GAC offices on or before 5:00 p.m. Central Daylight Time on Thursday, December 1, 2005. H-GAC will not accept late proposals; we will make no exceptions. Prospective bidders may contact Carol Kimmick at (713) 627-3200 or ckimmick@theworksource.org or visit the web site to request a proposal package.

TRD-200504876
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: October 27, 2005

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by ARMOR ASSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Burlington, Vermont.

Application to change the name of PACIFIC SPECIALTY LLOYDS to PACIFIC PROPERTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Menlo Park, California.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200505019
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: November 2, 2005

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Proposed Fiscal Year 2006 Research Agenda for the Texas Department of Insurance Workers' Compensation Research and Evaluation Group

House Bill (HB) 7 (79th Legislature, Regular Session, 2005) included a new §405.0026, Texas Labor Code, which requires the Commissioner of Insurance to adopt an annual research agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance (TDI). Section 405.0026, Texas Labor Code, also requires TDI to post a proposed research agenda in the *Texas Register* for public review and comment and requires the Commissioner of Insurance to hold a public hearing on the research agenda if requested by a member of the public.

In August 2005, the REG posted a public request to stakeholders and the general public for research agenda suggestions on the TDI website. The REG also made inquiries and requests of legislative offices for input to develop the Fiscal Year (FY) 2006 Research Agenda. After reviewing responses from the general public, stakeholders and legislative offices, the REG developed a proposed FY 2006 Research Agenda using the following criteria:

Is the proposed research project required by statute or likely to be part of an upcoming legislative review?

Will the results of the proposed research project address the information needs of multiple stakeholder groups and/or legislative committees?

Are there available data to complete the project or can data be obtained easily and economically to complete the project?

Does the REG have sufficient resources to complete the project within FY 2006?

Based upon the responses received and the criteria outlined above, the REG proposes the following set of projects for the FY 2006 Research Agenda for public review and comment.

Development of the Workers' Compensation Health Care Network Report Card required under §1305.502, Insurance Code and §405.0025, Texas Labor Code;

Analysis and report on injured worker survey to collect baseline information on issues relating to access to medical care, satisfaction with medical care, return-to-work outcomes, and functional outcomes prior to the implementation of certified workers' compensation health care networks (required by §405.0025(c), Texas Labor Code and §1305.501, Texas Insurance Code);

Creation of the research design to assess the impact of certified workers' compensation health care networks on both the cost and the quality of medical care provided to injured workers, including a comparison of medical care provided prior to and after the implementation of networks, as well as a comparison of medical care provided to injured workers in and outside of networks (preliminary analysis to be completed in FY 2007) (required by §405.0025(c), Texas Labor Code);

An analysis of access to medical care provided under the Approved Doctor's List (ADL), including the creation of a research design to track injured workers' access to medical care outside of certified workers' compensation health care networks;

Update of study to estimate employer participation in the Texas workers' compensation system (required by Article 5.55(e), Texas Insurance Code and §405.0025, Texas Labor Code);

Update of study comparing the medical and indemnity costs of the various state workers' compensation programs;

An analysis of the frequency, duration and outcome of medical disputes prior to the implementation of certified workers' compensation health care networks (required by §405.0025(c), Texas Labor Code);

An analysis of return-to-work outcomes for injured workers using data from the Texas Workforce Commission (TWC);

Development of a Designated Doctor and peer review doctor monitoring plan in conjunction with the Texas Department of Insurance, Division of Workers' Compensation;

An analysis of medical bill and compensability claim denial trends in the Texas workers' compensation system; and

An analysis of the frequency, duration and outcome of income benefit dispute hearings prior to the implementation of House Bill 7.

REQUEST FOR PUBLIC COMMENT OR PUBLIC HEARING. To be considered, written comments on the proposed FY 2006 Research Agenda must be submitted no later than 5:00 p.m. on November 25, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Amy Lee, Team Leader, Workers' Compensation Research and Evaluation Group, Mail Code 105-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing must be made separately to the Office of the Chief Clerk. The proposed research agenda can be found on TDI's website at www.tdi.state.tx.us. For questions regarding the proposed agenda, please contact Amy Lee at wcresearch@tdi.state.tx.us.

TRD-200504941

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: October 31, 2005

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Texas Lottery Commission

Correction of Error

The Texas Lottery Commission submitted a proposed amendment to 16 TAC §401.305 "Lotto Texas On-line Game" for publication in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5237).

The graphic submitted to the Texas Register as Figure: 16 TAC §401.305(e)(1), as published on page 5415, was incorrect. The Commission had not voted to propose to change the graphic, and the staff submitted the wrong graphic to the Texas Register. The graphic under §401.305(e)(1) remains unchanged.

At the October 31, 2005 Commission meeting, the Commission voted to adopt the amendments it proposed "without changes from the proposed text as published in the September 2, 2005 issue of the Texas Register." But, in doing so, the Commission understood that what was published in the *Texas Register* was identical to what the Commission proposed at its August 15, 2005 meeting. Therefore, the Commission did not vote to amend the graphic, notwithstanding the staff error of submitting the incorrect graphic in connection with the submission of the proposed text. The correct graphic has been submitted to the Texas Register with the filing of the adoption of the amendments to the rule.

TRD-200504995

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Instant Game Number 625 "Green and Gold"

1.0 Name and Style of Game.

A. The name of Instant Game No. 625 is "GREEN AND GOLD". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 625 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 625.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, $$ SYMBOL, GOLD BAR SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $40.00, $50.00, $100, $500, $1,000, or $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 625 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
$$ SYMBOL	DBLE
GOLD BAR SYMBOL	AUTO
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$

$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$50,000	50 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 625 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $15.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize - A prize of $1,000, $5,000, or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (625), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 625-0000001-001.

L. Pack - A pack of "GREEN AND GOLD" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "GREEN AND GOLD" Instant Game No. 625 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "GREEN AND GOLD" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If any of the player's YOUR NUMBERS play symbols matches any of the WINNING NUMBERS play symbols, the player wins prize shown for that number. If a player reveals a gold bar symbol, the player wins prize shown for that number instantly. If a player reveals a double dollar play symbol, the player wins DOUBLE the prize shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut and have exactly 44 (forty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No four or more like non-winning prize symbols on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

E. The doubler play symbol will only appear on intended winning tickets as dictated by the prize structure.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "GREEN AND GOLD" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "GREEN AND GOLD" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GREEN AND GOLD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "GREEN AND GOLD" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "GREEN AND GOLD" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 625. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 625 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	739,200	6.82
$10	336,000	15.00
$15	134,400	37.50
$20	117,600	42.86
$50	67,200	75.00
$100	16,338	308.48
$500	462	10,909.09
$1,000	126	40,000.00
$5,000	22	229,090.91
$50,000	5	1,008,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.57. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 625 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 625, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200504845
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 26, 2005

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Instant Game Number 629 "$50,000 Cash Bonanza"

1.0 Name and Style of Game.

A. The name of Instant Game No. 629 is "$50,000 CASH BONANZA". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 629 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 629.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $5.00, $10.00, $15.00, $25.00, $50.00, $100, $500, $5,000, $50,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and MONEY BAG SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 629 - 1.2D

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTEEN
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUN
$500	FIV HUN
$5,000	FIV THOU
$50,000	50 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FON
15	FTN
16	SXT
17	SVT
18	EGN
19	NTN
20	TWY
21	TNE
22	TTW
23	TTH
24	TFR
25	TFV
26	TSX
27	TSV
28	TEI
29	TNI
30	THY
MONEY BAG SYMBOL	10X

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 629 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00 or $15.00.

H. Mid-Tier Prize - A prize of $25.00, $50.00, $100, or $500.

I. High-Tier Prize- A prize of $5,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (629), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 629-0000001-001.

L. Pack - A pack of "$50,000 CASH BONANZA" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "$50,000 CASH BONANZA" Instant Game No. 629 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "$50,000 CASH BONANZA" Instant Game is determined once the latex on the ticket is scratched off to expose 43 (forty-three) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins prize shown for that number. If a player reveals a Money Bag play symbol, the player automatically wins 10 times the amount shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 43 (forty-three) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 43 (forty-three) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 43 (forty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 43 (forty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Players can win up to twenty (20) times in this play area.

C. No duplicate non-winning YOUR NUMBERS on a ticket.

D. Non-winning prize symbols will not match a winning prize symbol on a ticket.

E. Non-winning tickets will not contain more than three like prize amounts.

F. No duplicate WINNING NUMBERS will appear on a ticket.

G. The "Money Bag" symbol will never appear as a "WINNING NUMBER".

H. The "Money Bag" symbol will win ten (10) times the prize amount shown and will win as per the prize structure.

I. On tickets that win with the MONEY BAG symbol, no YOUR NUMBER will match any WINNING NUMBER.

J. YOUR NUMBERS will never equal the corresponding Prize symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "$50,000 CASH BONANZA" Instant Game prize of $5.00, $10.00, $15.00, $25.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $25.00, $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "$50,000 CASH BONANZA" Instant Game prize of $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "$50,000 CASH BONANZA" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "$50,000 CASH BONANZA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "$50,000 CASH BONANZA" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 629. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 629 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	740,000	8.11
$10	640,000	9.38
$15	180,000	33.33
$25	75,000	80.00
$50	56,250	106.67
$100	20,000	300.00
$500	1,400	4,285.71
$5,000	12	500,000.00
$50,000	3	2,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.50. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 629 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 629, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200504846
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: October 26, 2005

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Public Hearing to Receive Comments on §402.706 and §402.707

A public hearing to receive public comments regarding proposed new rules at 16 TAC §§402.706 and 402.707, relating to Standard Administrative Penalty Guideline and Expedited Administrative Penalty Guideline respectively, will be held on Wednesday, November 30, 2005, at 11:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200504991
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 1, 2005

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Texas Parks and Wildlife Department

Notice of Opportunity for Public Hearing and Public Comment

Richmond Material Company

Application to Renew TPWD Sand and Gravel Permit No. 2002-001

Richmond Materials applied for renewal of Texas Parks and Wildlife (TPWD) Sand and Gravel Permit No. 2002-001, to remove up to 30,000 tons of sedimentary material from the Brazos River, Fort Bend County, with a hydraulic dredge, at a site approximately 2.1 miles upstream from state highway crossing US 59, and 3.4 miles downstream from state highway crossing Highway 90A, near Richmond, Texas, beginning in January 2006. A public hearing will be held on Monday, December 12, 2005, at 2 p.m. in the Law Library at TPWD Headquarters, 4200 Smith School Road, Austin, TX 78744. This hearing is not a contested case hearing under the Administrative Procedure Act. Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register* or the newspaper, whichever is later, or at the public hearing. Submit written comments by U.S. Mail, by FAX (512) 389-4482; by e-mail: Robert.Sweeney@tpwd.state.tx.us; or by phone: to (512) 389-8855.

TRD-200504992
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: November 1, 2005

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Public Utility Commission of Texas

Notice of Application for Approval of a Merger Pursuant to Public Utility Regulatory Act §39.158

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 25, 2005, for approval of a merger pursuant to Public Utility Regulatory Act (PURA) §39.158. A summary of the application follows.

Docket Title and Number: Application of Exelon Corporation and Public Service Enterprise Group Incorporated Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 31956 before the Public Utility Commission of Texas.

Exelon Corporation and Public Service Enterprise Group Incorporated and its subsidiaries, Guadalupe Power Partners, L.P. and Odessa-Ector Power Partners, L.P. have submitted an application for approval of merger. They are required to obtain Commission approval before closing if the electricity to be offered for sale in the Electric Reliability Council of Texas (ERCOT) will exceed 1% of the total electricity for sale in ERCOT. The commission shall approve the transaction unless the commission finds that the transaction results in a violation of Public Utility Regulatory Act §39.154. Under §39.154, a power generation company may not own and control more than 20% of the installed generation capacity located in, or capable of delivering electricity to, ERCOT. The Applicant stated that the combined company will own or control 5,696 MW of installed generation capacity within ERCOT and that this will not exceed the 20% limitation.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 28, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31956.

TRD-200505020
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 2, 2005

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On October 31, 2005, EarthCall Communications filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60660. Applicant intends to relinquish its certificate.

The Application: Application of EarthCall Communications to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 31970.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 16, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31970.

TRD-200505021
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 2, 2005

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Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On October 31, 2005, Cinergy Communications Company filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60675. Applicant intends to relinquish its certificate.

The Application: Application of Cinergy Communications Company to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 31971.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 16, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31971.

TRD-200505022
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 2, 2005

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Public Notice of Workshop on Default Service and Request for Comments

The Staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding Project Number 31416, *Default Service (PTB, POLR, and Default Service)*, on Wednesday, January, 11, 2006, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 31416, *Evaluation of Default Service for Residential Customers and Review of Rules Relating to the Price of Beat and Provider of Last Resort*, has been established for this proceeding. Prior to the workshop, the commission request interested persons file comments to the following questions:

Price to Beat Phase

1. Should a definition of "Default Service Customer" be added to clarify that current Price to Beat (PTB) customers will be Default Service Customers once the PTB has expired?

2. A common complaint with PTB has been that the rate goes up, but never comes down. Do the rules need to be reshaped to make it easier for the PTB to be adjusted downward?

3. If the answer to #2 is "Yes", please describe how the downward adjustment provision should be structured in light of PURA §39.202(l). Is an automatic "look-back" or "re-examination" at a set date or a set threshold percentage a viable option?

4. Should the number of trading days used in the average of the forward 12-month NYMEX Henry Hub natural gas settlement prices be adjusted to a number more or less than the current 20 days, or should the number of days remain unchanged?

5. Are the Henry Hub natural gas prices the appropriate prices to use in the average? If not, what would be a more appropriate source of prices?

6. Should the rule allow the commission to react to an extreme event, such as an emergency declaration or a natural disaster, and modify the way that fuel factor adjustments are handled while prices are being influenced by the extreme event?

7. Should a higher threshold for an upward adjustment be implemented for the last few months of the PTB period?

8. Should the mechanics of the fuel factor adjustment formula be revised so that the fuel factors no longer increase on a "one-to-one" ratio with increases in natural gas prices? Please explain why (or why not), with examples as to what has changed (or has not changed) in the market that would make the revisions appropriate (or inappropriate).

9. Should the Affiliated Retail Electric Providers (AREPs) have to demonstrate that their actual costs of purchased power have changed before a fuel factor adjustment is authorized?

10. Are there any other revisions to the PTB rule that would be appropriate? Please describe in detail the proposed revision and the justification for its appropriateness.

11. Should the commission require the AREPs to include a "bill insert" to PTB customers that informs them of competitive offers available from other Retail Electric Providers (REPs)?

Provider of Last Resort Phase

1. How can we ensure a better matching between the customer classes that a REP serving as the Provider of Last Resort (POLR) provider is prepared to serve and the customers that the POLR is assigned to serve?

2. What changes in commission rules would facilitate better information exchange when customers are moved to the POLR? How can the information exchange be handled if the REP losing customers fails to cooperate in the transition of customers to POLR or if the REP fails to exist? Should the commission establish timelines for the exchange of this information, and if so, what are the crucial points?

3. How should transfers of customers be facilitated if the POLR does not cooperate in sending the switch transactions in a timely manner? Should the commission define the timeframe by which the switches will be sent, and if so, what is the appropriate timeframe? How can the rule more clearly define when the POLR's obligation to serve begins?

4. Is there a mechanism by which the commission could require a defaulting REP to transfer customer deposits to the POLR or require prompt return of deposits to the customers? Is it appropriate to allow POLRs to require a customer to pay a deposit with only 10 days notice, if the customer is being transferred due to a REP default? Should customers in a REP default situation have additional deposit payment options if the customer has previously made a deposit that is being held by the defaulting REP?

5. Should one of the objectives of the POLR service be to provide rate protection to customers, as the PTB does, or should it be limited to ensuring continuity of service?

6. How should the POLR rate be adjusted for changes in energy prices?

7. What should be the eligibility requirement to serve as the POLR? Should the REPs be given the opportunity to prove either eligibility or non-eligibility? In particular, how should the commission assess financial capability of REPs to serve as POLR?

8. What are the appropriate timeframes and the appropriate process associated with the selection of the POLR providers?

9. How should non-paying critical care and/or ill and disabled customers be accounted for in the POLR rule?

10. What data should be available to REPs for the purposes of making a bid to provide POLR service? Are there any concerns with making such data available?

11. Are there any other revisions to the POLR rule that would be appropriate? Please describe in detail the proposed revision and why it is appropriate to address it.

Default Service Phase

1. Is there a need for a Default Service Provider after the expiration of PTB on January 1, 2007, to provide some price certainty for customers who have not switched to a Competitive Retail Electric Provider (CREP)?

2. Can and should PTB customers be moved to a Default Service Provider, under a Default Service Rate when PTB expires?

3. Should the Default Service Provider be the AREP? Would such a designation constitute a "continuation" of the PTB?

4. If the answer to #3 is "No", what should be the selection process to determine which REPs will serve as the Default Service Providers?

5. If a Default Service is established, how should the rates of Default Service be determined? Should the rate be fixed over a term or variable? Should the Default Service price serve as the "benchmark" for other competitive offers to be compared to, similar to how PTB serves as the current "benchmark" for competitive offers?

6. Are there any other issues involving Default Service that would be appropriate to address? Please describe in detail the proposed issue and why it is appropriate to address it.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 30 days of the date of publication of this notice. All responses should reference Project Number 31416. This notice is not a formal notice of proposed rulemakings, however, the parties' responses to the questions and comments at the workshop will assist the commission in developing a commission policy or determining the necessity for related rulemakings.

Questions concerning the workshop or this notice should be referred to Matthew Troxle, Director of the Retail Market Oversight Section, Electric Industry Oversight Division, 512-936-7380. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200505023
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 2, 2005

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Request for Comments Relating to Rulemaking to Implement Senate Bill 5 Amendments to Local Government Code Chapter 283

The Public Utility Commission of Texas (commission) has initiated Project Number 31973 to address the impact of Senate Bill 5 (SB 5) on Chapter 283 of the Local Government Code, and amend, if necessary, P.U.C. Substantive Rules, Chapter 26, Subchapter R, relating to *Provisions Relating to Municipal Regulation and Rights-of-way Management*. Staff seeks comments from interested parties in response to questions raised herein. The issues raised by these questions will be discussed in a workshop to be held on this matter on Wednesday, November 30, 2005.

Background

SB 5 amended Local Government Code Section 283.002, Subdivision (2) and added Subdivision (7) to read as follows:

(2) "Certificated telecommunications provider" means a person who has been issued a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority by the commission to offer local exchange telephone service or a person who provides voice service.

(7) "Voice service" means voice communications services provided through wireline facilities located at least in part in the public right-of-way, without regard to the delivery technology, including Internet protocol technology. The term does not include voice service provided by a commercial mobile service provider as defined by 47 U.S.C. Section 332(d).

Questions

In order to determine whether modifications to the commission's rule language are warranted to address the above amendment, Staff poses the following questions:

Issue 1: Currently the commission's right-of-way rules pursuant to Chapter 283 apply only to holders of commission-issued SPCOA, COA, and CCN certificates. SB 5 expands Chapter 283 to include providers of "voice services."

(a) What type of companies/providers (that are not holders of CCN, COA, or SPCOA) offer "voice services" as contemplated by SB 5? Give examples.

(b) What types of services are contemplated as "voice services" by SB 5? Give examples.

(c) How do current FCC rules regarding voice over internet protocol (VoIP) carriers impact the implementation of SB 5 amendments to Chapter 283?

Issue 2: Local Government Code Section 283.002(1) defines an "access line" and P.U.C. Substantive Rule §26.465 (d) outlines the methodology for counting access lines.

(a) How does the inclusion of "voice services" in the amended definition of "Certificated telecommunications provider" in SB 5, impact Local Government Code Section 283.002(1) and P.U.C. Substantive Rule §26.465 (d)?

(b) Please list any "voice services" as defined in SB 5, that are not already included in Local Government Code Section 283.002(1) and P.U.C. Substantive Rule §26.465 (d), but should be counted as an access line for compensation purposes.

Issue 3: The commission currently has three categories of access lines: Residential, Non-residential, and Point-to-point. Each of these categories has a different fee in each municipality.

Please list new "voice services" that could be counted under category 1, category 2, or category 3.

Issue 4: SB 5 Section 55.173 made the following changes to the utility code. **Sec. 55.1735. Charge for Payphone Access Line**: The charge or surcharge a local exchange company imposes for an access line used to provide pay telephone service in an exchange may not exceed the amount of the charge or surcharge the company imposes for an access line used for regular business purposes in that exchange.

Staff seeks comments on amending P.U.C. Substantive Rule §26.463, relating to *Methodology for Counting Access Lines and Reporting Requirements for Certificated Telecommunications Providers*, to include pay-pay phones as a Category 2 access line.

Issue 5: Impact of other sections of SB 5.

(a) Are there other sections of SB 5 that impact the commission's Chapter 26, Subchapter R right-of-way rules?

(b) If so, Staff seeks comment on the impact of these sections on the commission's right-of- way rules.

Responses to the questions may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All comments should refer to Project Number 31973. Comments must be received by 3:00 p.m. on Monday, November 21, 2005. The workshop to discuss the written comments will be held on Wednesday, November 30, 2005, 10:00 a.m., at the offices of the Public Utility Commission of Texas, Austin, Texas 78711. For additional information please contact Garnet Elkins at garnet.elkins@puc.state.tx.us or at (512) 936-7322.

TRD-200505024
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 2, 2005

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Sam Houston State University

Consultant Proposal Request

This request for consulting services is filed under the provisions of Texas Civil Statutes, Article 6252-11c. Sam Houston State University (SHSU) seeks written proposals from qualified consulting firms based in Washington, D.C. to represent and assist the University in developing projects deemed important to the University. Important considerations in the award of the proposed contract will be the years of experience in securing funding assistance for university programs and facilities, a strong bipartisan presence within the firm with considerable experience working with legislative staffs, and a record of substantial success in dealing with the Congress and the Executive Agencies. Excellent skills in university grant and contract awards are necessary. Substantial experience in the development of strategies for corporate participation in university-sponsored development projects especially those relating to environmental and telecommunication issues. Interested parties are invited to express their interest and describe their capabilities on or before December 12, 2005. The consulting services desired are a continuation of a service previously performed by a private consultant. This contract represents a renewal and will be awarded to the previous consultant unless a better offer is received. The term of the contract is to be from date of award for a twelve (12) month period with options to renew. Further technical information can be obtained from Dr. Gordon A. Plishker at (936) 294-3621. Deadline for receipt of proposals is 4:00 p.m. December 12, 2005. Date and time will be stamped on the proposals by the Office of Research and Sponsored Programs. Proposals received later than this date and time will not be considered. All proposals must be specific and must be responsive to the criteria set forth in this request.

I. GENERAL INSTRUCTIONS

Submit one (1) copy of your proposal in a sealed envelope to: Office of Research and Sponsored Programs, P.O. Box 2448, Sam Houston State University, Huntsville, Texas, 77341-2448 before 4:00 p.m., December 12, 2005. Proposals may be modified or withdrawn prior to the established due date.

II. DISCUSSIONS WITH OFFERERS AND AWARD

The University reserves the right to conduct discussions with any or all offerers, or to make an award of a contract without such discussions based only on evaluation of the written proposals. The University also reserves the right to designate a review committee in evaluating the proposals according to the criteria set forth under Section III entitled "Scope of Work." The Associate Vice President for Research and Sponsored Programs shall make a written determination showing the basis upon which the award was made and such determination shall be kept on file.

III. SCOPE OF WORK

1. Representation and assistance in developing projects deemed important to the University.

2. Assistance in obtaining funding for University projects.

3. Consulting and representation as directed by Sam Houston State University.

IV. EVALUATION

A. Criteria for Evaluation of Proposals:

Firms will be evaluated on time and quality of experience in representing and assisting universities in developing projects. Equal consideration will be given to past performance, writing skills, and the effectiveness of the firm's strategies.

B. Your proposal should include costs for all related expenses.

V. TERMINATION

This Request for Proposal (RFP) in no manner obligates SHSU to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written contract. Progress towards this end is solely at the discretion of SHSU and may be terminated without penalty or obligation at any time prior to the signing of a contract. SHSU reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals. SHSU requires that the responses to this RFP must state that the proposed terms will remain in effect for at least forty-five (45) days after the scheduled response opening.

TRD-200504935
Dr. James F. Gaertner
President
Sam Houston State University
Filed: October 28, 2005

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Texas A&M University, Board of Regents

Request for Proposals

The Texas A&M University System (A&M System) announces a Request for Proposals (RFP) to provide administrative services for its self-insured employee group health plan, prescription drug plan, and dental plan. In addition proposals are sought to provide a fully-insured dental HMO and a Consumer Directed Health Plan option. Firms are invited to submit proposals for any or all of the plans mentioned above. The RFP solicits proposals for plans beginning September 1, 2006.

Firms wishing to respond to this request must have superior, recognized expertise and specialize in administering benefit plans of the types listed above.

The deadline for receipt of proposals in response to this request is 4:00 p.m. CST on December 21, 2005.

The A&M System reserves the right to accept or reject any or all proposals submitted and is under no legal requirement to execute a resulting contract on the basis of this advertisement. The A&M System intends to use responses as a basis for further negotiations of specific project details and will base its choice on cost, demonstrated competence, superior qualifications, and evidence of conformance with the RFP criteria. The A&M System shall not designate and will not pay commissions to an Agent of Record or a commissioned representative.

The RFP does not commit the A&M System to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the A&M System to award a contract or to pay any costs incurred in the preparation of a response. The A&M System specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the A&M System deems it to be in its best interest.

Beginning November 11, 2005, RFP instructions providing detailed information regarding the project can be downloaded from http://sago.tamu.edu/shro/rfp.asp or written requests can be faxed to Paul Bozeman, System Human Resource Office, The Texas A&M

University System, FAX (979) 458-6190 (physical address: 200 Technology Way, Suite 1281, College Station, Texas 77845-3424). For questions or further information regarding this notice, contact Mr. Bozeman by facsimile or by e-mail at pbozeman@tamu.edu.

TRD-200505006
Vickie Burt Spillers
Executive Secretary to the Board
Texas A&M University, Board of Regents
Filed: November 2, 2005

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Texas Department of Transportation

Public Hearing--43 TAC §29.48, Boarding Priorities; and Further Extension of Comment Period Deadline

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning proposed rules governing boarding priorities for state-owned ferries. The text of the proposed rule appeared in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5773). The proposed rule hearing that was originally scheduled for September 21, 2005, on this matter was cancelled due to the approach of hurricane Rita. The rescheduled public hearing concerning 43 TAC §29.48, Boarding Priorities, was then scheduled to be held on October 13, 2005, as posted in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6321). That hearing was also cancelled. The public hearing concerning 43 TAC §29.48, Boarding Priorities, has now been rescheduled and will be held from 6:30 p.m. to 8:30 p.m. on Tuesday, November 29, 2005, at Crenshaw Elementary and Middle School, 416 Highway 87, Crystal Beach, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 6:00 p.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed rule text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed rule text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Randall Dillard, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate services can be provided.

Written comments on the proposed rule were originally due by 5:00 p.m. on October 10, 2005 and then extended to 5:00 p.m. on October 24, 2005. The deadline for receipt of comments has now been extended to 5:00 p.m. on December 15, 2005. Written comments on the proposed rule may be submitted to Zane Webb, P.E., Director, Maintenance Division, 125 East 11th Street, Austin, Texas 78701-2483.

TRD-200505009
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 2, 2005

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Public Notice, Revised--Public Transportation Strategic Plan

In the October 28, 2005, issue of the *Texas Register* (30 TexReg 7090), the Texas Department of Transportation, published a Public Notice--Public Transportation Strategic Plan. The comment deadline has been changed. The following public notice is re-published with the new deadline.

The Texas Department of Transportation (the department) will hold a series of five statewide video teleconferences to solicit input on the proposed Texas Public Transportation Strategic Plan to facilitate the coordination and integration of transportation resources, assets, and service delivery in the most cost effective manner.

The statewide video teleconferences will be held on the following dates at the locations listed below:

Monday, November 14, 2005, beginning at 1:00 p.m.:

Atlanta--701 E. Main Street, Atlanta, Texas

Dallas--4777 E. Highway 80, Mesquite, Texas

Paris--1365 N. Main Street, Training Center, Paris, Texas

Tyler--2709 W. Front Street, Training Center, Tyler, Texas

Waco--100 South Loop Drive, District Training Facility, Waco, Texas

Friday, November 18, 2005, beginning at 1:00 p.m.:

Austin--200 East Riverside Drive, Room D, Austin, Texas

Beaumont--8350 Eastex Freeway, Beaumont, Texas

Bryan--1300 North Texas Avenue, Bryan, Texas

Houston--7721 Washington Avenue, Houston District Office, VTC Conference Building, Houston, Texas

Lufkin--1805 N. Timberland, Lufkin, Texas

Monday, November 21, 2005, beginning at 1:00 p.m.:

Abilene--4250 N. Clack, Abilene, Texas

Brownwood--2495 Highway 183 North, Brownwood, Texas

Childress--7599 U.S. Highway 287, Childress, Texas

Fort Worth--2501 S.W. Loop 820, Computer Training Room, Fort Worth, Texas

Wichita Falls--1601 Southwest Parkway, Wichita Falls, Texas

Monday, November 28, 2005, beginning at 1:00 p.m.:

Corpus Christi--1701 South Padre Island Drive, Corpus Christi, Texas

Laredo--1817 Bob Bullock Loop, VTC Meeting Room, Laredo, Texas

Pharr--600 West Expressway 83, Pharr, Texas

San Antonio--4615 N.W. Loop 410, San Antonio, Texas

Yoakum--403 Huck, Training Room, Yoakum, Texas

Wednesday, November 30, 2005, beginning at 2:00 p.m. (CST):

Amarillo--5715 Canyon Drive, Building H, Training Conference S. Room, Amarillo, Texas

Lubbock--135 Slaton Road, Training Center, Lubbock, Texas

Odessa--3901 E. Highway 80, Large Conference Room, Odessa, Texas

San Angelo--4502 Knickerbocker Road, Building 5-A, San Angelo, Texas

Wednesday, November 30, 2005, beginning at 1:00 p.m. (MST):

El Paso--1430 Joe Battle Boulevard, East Area Office, El Paso, Texas

Public input will assist TxDOT in developing a strategic plan for public transportation in Texas. Citizens of Texas are encouraged to join TxDOT at the public meeting held in their area to express comments on this topic. (The video teleconferences will be recorded.)

Questions concerning the meeting or this notice should be referred to Ginnie Mayle, Public Transportation Division, (512) 416-2867.

SUBMITTAL OF WRITTEN COMMENTS

Written comments may be submitted to Kelly Kirkland, Planning and Support Director, Public Transportation Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments is 5:00 p.m. on December 16, 2005.

TRD-200505008
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 2, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).